

File Date: August 28 2008

Case No: OBcv 1361

ATTACHMENT # \_\_\_\_\_

EXHIBIT 5-8

TAB (DESCRIPTION)

\_\_\_\_\_



## Report of Death of an American Citizen

Merida, Yucatan, Mexico 10/26/2007

(Post &amp; date of issue)

Name in full John Wozniak Age 59Date and Place of Birth January 22, 1948 PolandEvidence of U.S. Citizenship Passport No. 027158676 issued on August 11, 2000.Address in U.S.A. 7026 Wilson Terrace Morton Grove, Illinois 60053Permanent or Temporary Address Wyndom Resort Cozumel, Quintana Roo, Mexico.Date of death October 16 13:58 2007  
(Month) (Day) (Hour) (Year)Place of death Centro Medico de Cozumel Cozumel, Quintana Roo Mexico  
(Number and street) or (Hospital or hotel) (City) (Country)Cause of death Subdural hematoma, head trauma, accidental fall, severe metabolic uncontrolled, type II diabetes  
(Including authority for statement - if physician, include full name and official title, if any)as certified in Mexican death certificate by Dr. Salvador Martin Mandujano.Disposition of the remains Prepared and sent to Niles, Illinois.Local law governing disinterment of remains provides N/ADisposition of the effects In custody of NOK/spouse Danuja Wozniak.Person or official responsible for custody of effects and accounting therefore Danuja Wozniak.

Traveling/residing abroad with relatives or friends as follows:

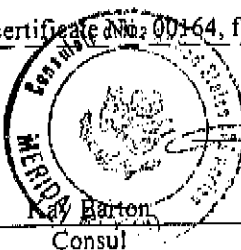
NAME ADDRESS  
Danuja Wozniak 7026 Wilson Terrace, Morton Grove, IL 60053Informed by telegram or telephone  
NAME ADDRESS  
Danuja Wozniak 7026 Wilson Terrace, Morton Grove, IL 60053Copy of this report sent to:  
NAME ADDRESS  
Danuja Wozniak 7026 Wilson Terrace, Morton Grove, IL 60053Notification or copy sent to Federal Agencies: SSA ☒ VA ☐ CSC ☐ Other ☐  
(State Agency)

The original copy of this document and information concerning the effects are being placed in the permanent files of the Department of State, Washington, D.C. 20520

## Remarks:

Passport returned to next of kin. Mexican death certificate No. 00164, filed Oct. 17, 2007, Cozumel, Q.Roo, Mexico.  
(Continue on reverse if necessary.)

[SEAL]

Kay Barton  
(Signature on all copies)

of the United States of America.



**CENTRO MÉDICO DE COZUMEL**

CALLE PRIMERA SUR #101, COZUMEL QR, MÉXICO 77600

**COZUMEL MEDICAL CENTER**

TEL/FAX: 987.872.9400 FROM USA (01152)

FECHA/EXAM DATE: 20071016

PACIENTE/PATIENT: JOHN WICENTY WOZNAK

EXPEDIENTE/MRN: 0000000000000047435

EPISODIO/EPISODE: INT 91751 1

MÉDICO/PHYSICIAN: GARCIA- MAGAÑA ,EDUARDO

ESPEC/SPECIALTY: MED. INTERNA/INTERNAL MEDICINE

**REPORTE MÉDICO/MEDICAL REPORT****INTERNAL MEDICINE****EMERGENCY ROOM REPORT.**

WAS ADMITTED A MALE CAUCASIAN PATIENT WHO ARRIVED ON THE AMBULANCE WITH A RESPIRATORY ARREST AND ARRHYTHMIAS. THE PATIENT HAD HISTORY OF DIABETES MELLITUS AND HYPERTENSION. THE PATIENT HAD AN ACCIDENT ON PAST SUNDAY ON THE WHYNHAM HOTEL, HE HAD A HEAD TRAUMA, WAS EVALUATED AND TREATED. DURING ALL NIGHT AND YESTERDAY HE COMPLAINED OF SEVERE HEADACHE AND DEVELOPED DIZZINESS AND VOMIT. TODAY THE PATIENT CONTINUES WITH DIZZINESS, CONTINUED WITH HEADACHE AND DEVELOPED A SYNCOPED, WITH LOSS OF CONSCIOUS AND NEW HEAD TRAUMA, WAS TRANSPORTED BY AMBULANCE TO THIS CLINIC, DURING THE WAY HE WAS FOUND WITH RESPIRATORY ARREST AND LOW PULSE, UPON ADMISSION THE PATIENT SHOWED A HR 45 WITH ECTOPIC VENTRICULAR BEATS, NO BREATHING. WAS STARTED TREATMENT WITH ACLS MANUEVERS. ALSO WAS DETECTED WITH A BLOOD GLUCOSE OF 500mg/dl. WAS INTUBATED, STARTED CPR, MECHANICAL VENTILATION AND GIVEN TREATMENT WITH ATROPINE, EPINEFRINE, BICARBONATE, DOPAMINE, LIDOCAINE AND AMODARONE. AFTER 40 MINUTES WITH ACLS THE PATIENT DEVELOPED ASYSTOLIA WITHOUT RESPONSE TO MANUEVERS. WAS DIAGNOSED HIS DEATH AT 13:58 HR.

MÉDICO/PHYSICIAN: GARCIA- MAGAÑA ,EDUARDO  
ESPEC/SPECIALTY: MED. INTERNA/INTERNAL MEDICINE  
CEDULA 3098708



EGA

**CENTRO MÉDICO DE COZUMEL**

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PACIENTE/PATIENT: JOHN WICENTY WOZNAK .

EXPEDIENTE/MRN : 0000000000000047435

EPISODIO/EPISODE: INT 91751 1

MÉDICO/PHYSICIAN: RUBALCAVA- JARILLO ,CITALLI

ESPEC/SPECIALTY: MEDICINA GENERAL/GENERAL MED.

**REPORTE MÉDICO/MEDICAL REPORT****EMERGENCY ROOM REPORT**

59 YEARS OLD MALE WHO ARRIVED TO THIS FACILITY BY AN AMBULANCE. HE IS GUEST OF THE CORAL REEF HOTEL. THE PATIENT FELL DOWN TODAY AND TRIPPED WHILE HE WAS HAVING BREAKFAST. HE HIT HIS HEAD AND DEVELOPED A SYNCOPÉ AND ARRHYTHMIAS.

THE WIFE TOLD US THAT HE HAD A CLAVICULE FRACTURE ON SATURDAY, BECAUSE HE ALSO FELL DOWN OVER HIS LEFT SHOULDER, HE ALSO HAD A HEAD TRAUMA AFTER THAT HE BEGAN TO DEVELOPED HEADACHE. HE WAS TREATED ON THAT MOMENT FOR THE HOSPITAL'S DOCTOR.

**MEDICAL HISTORY**

HIGH BLOOD PRESSURE SINCE AROUND 11 YEARS OLD

DIABETIC

HE HAD RIGHT EYE CANCER , NOW HE WAS USING EYE PROTHESIS

THE WIFE REPORTED THAT HE ALSO PRESENTED STOMACH TROUBLES SUCH AS GASTRITIS.

THE PATIENT IS TAKING CURRENT MEDICATION BUT THE WIFE DOES NOT BRING WITH THE MEDICATION LIST

**PHYSICAL EXAMINATION**

SATURACION 75%

THE PATIENT WAS UNCONSCIOUS , ANISOCORIC PUPILS, DIFFICULT BREATHING , THE PATIENT WAS WITH ECTOPIC VENTRICULAR BEATS , NONE MURMURES, LOW PULSE , AND THEN HE STARTED NOT TO BREATHE, HE STARTED WITH ACLS MANUEVERS. AT THIS TIME WE FOUND 500 /MG GLUCOSE , THE PATIENT WAS INTUBATED, STARTED WITH CPR, MECHANICAL VENTILATION AND GIVEN TREATMENT WITH MIDAZOLAM 13:20HRS 5MG SUCCINIL COLINA 8 MG 13:20 HRS, ATROPINA 1 MG 13:20 HRS, EPINEPHRINE 1 AMP 13:25 HRS LIDOCAINE 13:20 HRS LIDOCAINE 10 ML 13:29 HRS EPINEFRINE 1 AMP, MIDAZOLAN 13:32 5MG, BICARBONATO 13:35 HRS 5 AMPULAS, DOPAMINA 13:40 250ML, AMIODARONA 13:45 30 ML, EPINEPHRINE 13:50. 40 MINUTES AFTERWARDS HE DEVELOPED ASYSTOLIA WITHOUT RESPONSE TO MANUEVERS.

TIME OF DEATH APROXIMATELY 13:58 HRS.

MÉDICO/PHYSICIAN: RUBALCAVA- JARILLO ,CITALLI

ESPEC/SPECIALTY: MEDICINA GENERAL/GENERAL MED.

CEDULA 3545139

EGA

VALERIE CAPERS WORKMAN, JULY 2, 2008

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION  
CIVIL ACTION NO. 08 CV 1361

DANUTA WOZNIAK, Individually,  
And as Special Administrator : DEPOSITION OF:  
Of the ESTATE of IAN WOZNIAK,  
Deceased,

Plaintiffs, :  
VALERIE CAPERS WORKMAN, :  
Vs. :  
Defendants. :

Wyndham Hotels AND RESORTS, :  
LLC, a foreign corporation, :

Defendants. :

TRANSCRIPT of the deposition of the Witness,  
called for Oral Examination in the above-captioned  
matter, said deposition being taken pursuant to Superior  
Court Rules of Practice and Procedure by and before  
JAMES A. KORWAN, Certified Shorthand Reporter, (License  
No. 1800), and Notary Public of the State of New Jersey,  
at the offices of DAY, PITNEY, 200 Campus Drive, North  
Park, New Jersey 07932, on Wednesday, July 2, 2008,  
commencing at approximately 3:16 p.m.

ESQUIRE DEPOSITION SERVICES  
90 Woodbridge Center Drive  
Suite 340  
Woodbridge, New Jersey 07095  
Phone - (732) 283-1060 - Fax - (732) 283-1640  
800-247-8366

Job No. 66536

ORIGINAL

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## INDEX

WITNESS	EXAMINATION BY	PAGE
VALERIE CAPERS WORKMAN	Mr. Nemeroff	4, 141
Mr. Dely	134	

## EXHIBITS

NUMBER	DESCRIPTION	MARKED FOR ID
1	Wyndham Hotel Franchise Agreement Between Wyndham Hotel Group International and Islander Properties	8
2	Two-page Affidavit	9
3	Wyndham Hotels and Resorts Brand Standards Manual	14
4	Conversion Plan Report	110

## REQUESTS

NUMBER	DESCRIPTION	PAGE	LINE
1	All Affidavits	43	1-3
2	List including the name of Jurisdiction and lawyers involved of all litigation involving Wyndham and its Franchisees	45	19-23

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## APPEARANCES:

DAVID NEMEROFF, ESQ.  
55 West Monroe Street  
Suite 600  
Chicago, Illinois 60603  
Attorney for the Plaintiffs

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER  
120 North LaSalle Street  
26th Floor  
Chicago, Illinois 60602  
BY: CHRISTOPHER DELY, ESQ.  
Attorneys for the Defendant

WYNDHAM WORLDWIDE CORPORATION  
1 Sylvan Way  
Parsippany, New Jersey 07054  
BY: MARC MERRIWEATHER, ESQ.  
In-House Counsel for Wyndham  
Worldwide

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## VALERIE CAPERS WORKMAN,

Having been first duly sworn, was examined and testified  
as follows:

## EXAMINATION

BY MR. NEMEROFF:

Q. Okay. Can you please state your name, ma'am?

A. Valerie Capers Workman.

MR. NEMEROFF: Let the record reflect, this  
is the deposition of Valerie Capers Workman taken  
pursuant to court order and all applicable rules.

Q. Do you like being called Ms. Capers Workman, Ms.  
Workman? How would you like to be addressed, ma'am?

A. Ms. Workman is fine. Thanks.

Q. Ms. Workman, my name is David Nemeroff, attorney  
here in Chicago. I represent Danuta Wozniak, both  
individually and as special administrator of the Estate  
of Jan Wozniak, her deceased husband, in a lawsuit that  
we filed here in Illinois against Wyndham Hotels and  
Resorts LLC. And I am going to be asking you some  
questions today.

MR. NEMEROFF: And, just for the record,  
because this is limited in topic and scope, I am going  
to reserve the right, should we at a later date, to  
re-depose this witness on the full issues in the  
underlying case. This is being taken for purposes of



1 (Pages 1 to 4)

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1 the motion to dismiss for forum non-convenience.  
 2 MR. DELY: I would only add that to the  
 3 extent that Ms. Capers Workman is, in fact, the most  
 4 knowledgeable individual on information you might seek  
 5 down the road, if necessary. But for purposes of today,  
 6 this is only for the forum non-convenience motion.  
 7 Q. Ms. Workman, what is your home address?  
 8 A. My home address is 10 Arnold Drive, Parsippany,  
 9 New Jersey.  
 10 Q. And who are you currently employed with?  
 11 A. I am currently employed by Wyndham Hotel Group.  
 12 Q. And what is your position with Wyndham Hotel  
 13 Group?  
 14 A. I am vice president, franchise administration.  
 15 Q. What is the difference between Wyndham Hotel  
 16 Group and Wyndham Hotels and Resorts LLC?  
 17 A. Wyndham Hotel Group is the parent of Wyndham  
 18 Hotels and Resorts.  
 19 Q. Okay. So Wyndham Hotel Group owns Wyndham Hotels  
 20 and Resorts LLC, correct?  
 21 A. Essentially, that's correct.  
 22 Q. Is there any kind of functional difference  
 23 between the two entities?  
 24 A. Yes.  
 25 Q. Can you explain to me what the functional

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1 difference is or what, functionally, Wyndham Hotel Group  
 2 does versus what functionally Wyndham Hotel and Resorts  
 3 LLC does?  
 4 A. Generally speaking, Wyndham Hotels and Resorts is  
 5 the operator of the brand. And Wyndham Hotel Group is  
 6 the entity to which Wyndham Hotel Group rolls into among  
 7 other brands. Did I say that correctly? Let me repeat  
 8 that. Wyndham Hotel Group is the parent, if you will,  
 9 of Wyndham Hotels and Resorts and is the parent of other  
 10 brands, as well.  
 11 Q. Okay. Does Wyndham Hotel Group act as a  
 12 franchisor of the Wyndham brand?  
 13 A. Wyndham Hotels and Resorts is the franchisor.  
 14 Q. Okay. You're familiar with this lawsuit that was  
 15 filed at least in terms of you've read the complaint,  
 16 correct?  
 17 A. I believe so.  
 18 Q. Okay. And we sued Wyndham Hotels and Resorts,  
 19 LLC. That was the franchisor of the result where we  
 20 alleged that my -- that led to my client's death,  
 21 correct?  
 22 A. I would say, it's more correct to say that  
 23 Wyndham Hotels and Resorts and Wyndham Hotels  
 24 International are sister companies.  
 25 Q. I'm sorry. What is the second thing you said?

Page 7

1 Wyndham, what?  
 2 A. Wyndham International --  
 3 Q. Okay.  
 4 A. -- are sister companies.  
 5 MR. MERRIWEATHER: This is Mark. Let me  
 6 clarify. She said, correct, Wyndham Hotel Group  
 7 International. Not Wyndham International.  
 8 MR. NEMEROFF: Okay.  
 9 Q. Let me ask you a question. Who is the franchisor  
 10 to the property owned by Island Properties in Cozumel,  
 11 Mexico, where we allege that the incident that is  
 12 alleged in the complaint occurred?  
 13 A. Wyndham Hotel Group.  
 14 Q. Is that Wyndham Hotel Group International, Inc.?  
 15 A. Yes. No. International LLC.  
 16 Q. LLC, okay. I'm looking at a franchise agreement  
 17 that is dated June 29th, 2007. Do you have that in  
 18 front of you?  
 19 MR. MERRIWEATHER: The witness doesn't have  
 20 any documents in front of her. I have the documents in  
 21 front of me. I could put it in front of her.  
 22 MR. NEMEROFF: Could you please?  
 23 A. I have to correct. It is correct to say, Wyndham  
 24 Hotel Group International, comma, Inc.  
 25 MR. NEMEROFF: Why don't we mark that for

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1 the purposes of this deposition as Exhibit-1.  
 2 (Whereupon, Deposition Exhibit No. 1 was  
 3 marked for identification.)  
 4 BY MR. NEMEROFF:  
 5 Q. Okay. Can you take a look at the Wyndham Hotel  
 6 Franchise Agreement marked Exhibit-1?  
 7 A. Yes. I'm looking at the Wyndham Hotel Group  
 8 International, Inc., Franchise Agreement.  
 9 Q. And that is the agreement between Wyndham that  
 10 governed the franchisee/franchisor agreement for the  
 11 Cozumel property that is at issue here, correct?  
 12 A. Correct.  
 13 Q. What role does Wyndham Hotel and Resorts LLC have  
 14 with the Cozumel property that is at issue here?  
 15 A. Directly, none. This is Wyndham Hotel Group  
 16 International Inc.'s franchise agreement.  
 17 MR. NEMEROFF: All right. Now, I have an  
 18 affidavit that you signed as part of a motion to dismiss  
 19 based on what's called forum non-convenience. It is a  
 20 two-page document. Could you please place that in front  
 21 of the witness?  
 22 (Mr. Merriweather hands over document to the  
 23 witness.)  
 24 MR. MERRIWEATHER: The witness has it in  
 25 front of her.

2 (Pages 5 to 8)

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1 THE WITNESS: I have it.  
 2 MR. NEMEROFF: We're going to mark this  
 3 Exhibit Number 2.  
 4 (Whereupon, Deposition Exhibit No. 2 was  
 5 marked for identification.)  
 6 BY MR. NEMEROFF:  
 7 Q. This is an affidavit that you signed, correct?  
 8 A. Yes, I did.  
 9 Q. And it lists you as vice president of franchise  
 10 administration for Wyndham Hotels and Resorts, LLC,  
 11 correct?  
 12 A. Correct.  
 13 Q. Is that accurate?  
 14 A. Yes.  
 15 Q. Okay. What is your role with Wyndham Hotel Group  
 16 International, Inc.?  
 17 A. I am the vice president of franchise  
 18 administration.  
 19 Q. Okay. So you have the same title and role with  
 20 both entities, correct?  
 21 A. Generally, correct.  
 22 Q. When you say, "generally, correct," lawyers get  
 23 nervous about that. What do you mean, "generally,  
 24 correct"? What would be the distinction between your  
 25 roles with each entity?

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1 A. In, in -- generally speaking, Wyndham Hotel Group  
 2 International, Inc., are franchise agreements with  
 3 non-U.S. based properties. But that's very general.  
 4 But other than that, my role is essentially the same.  
 5 Q. Is Wyndham Hotel Group International, Inc., a  
 6 Delaware Corporation?  
 7 A. I am not recalling right now.  
 8 Q. All right. Your affidavit that you fill out says  
 9 that all references to the -- and I'm talking about  
 10 Exhibit Number 2 -- all references at WHR are references  
 11 to Wyndham Hotels and Resorts, LLC, correct?  
 12 A. Would you repeat that, please?  
 13 Q. Sure. If you look at Number 1 of the affidavit,  
 14 in parentheses it says, "hereinafter referenced as WHR"?  
 15 A. Yes.  
 16 Q. See where I'm referring?  
 17 A. Yes.  
 18 Q. WHR is referencing Wyndham Hotels and Resorts  
 19 LLC; is that correct?  
 20 A. That's correct.  
 21 Q. There is no reference anywhere in your affidavit  
 22 to Wyndham Hotel Group International, Inc., correct?  
 23 A. Specifically, that is correct.  
 24 Q. Okay. You say that WHR under Number 3 of the  
 25 affidavit has no ownership interest in Islander

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1 Properties and Hotel in Cozumel, Mexico, correct?  
 2 A. Which number are you referencing, please?  
 3 Q. Number 3.  
 4 A. That is correct.  
 5 Q. Okay. Does Wyndham Hotel Group International,  
 6 Inc., have any ownership interest in the Islander  
 7 Properties Hotel?  
 8 A. No.  
 9 Q. Okay. Islander Properties, is that the corporate  
 10 entity that owns the resort in Cozumel, Mexico, that's  
 11 at issue here?  
 12 A. Islander Properties is the franchisee. I am not  
 13 recalling right now whether they are the owner of the  
 14 property.  
 15 Q. Do you know who the owner of the property is of  
 16 the resort in Cozumel, Mexico?  
 17 A. As we sit here right now, I cannot say that I do.  
 18 Q. Okay. The Exhibit Number 1, which is the Wyndham  
 19 Hotel franchise agreement, this agreement that's marked  
 20 Exhibit-1 controls the relationship between the  
 21 franchisor, Wyndham Hotel Group, International, Inc.,  
 22 and Islander Properties, S, period, A, period, d-e, C,  
 23 period, V, period, correct?  
 24 A. Yes. It is a document that controls the  
 25 franchise relationship.

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1 Q. And that document is dated June 29th, 2007,  
 2 correct?  
 3 A. Correct.  
 4 Q. So this agreement was in place on October 16th,  
 5 2007, correct?  
 6 A. Correct.  
 7 Q. Now, in addition to this franchise agreement,  
 8 there are other manuals that further clarify the  
 9 obligations of the franchisor, franchisee, and vice  
 10 versa, correct?  
 11 A. I do not believe that I would put it that way.  
 12 Q. Well, there are other manuals that put more  
 13 minutia, so to speak, of what is required of the  
 14 franchisee, correct? For example, how somebody has to  
 15 be greeted, the five-minute rule -- excuse me -- the  
 16 five-foot rule, the ten-foot rule and other minutia,  
 17 correct?  
 18 A. I would not agree with how you're characterizing  
 19 other information or minutia.  
 20 Q. Okay. Let me ask you a question. When a phone  
 21 is answered at this Cozumel resort after this agreement  
 22 went into place, the franchisee is required to answer  
 23 the phone in a specific way that is dictated by the  
 24 Wyndham manual, correct?  
 25 A. That is incorrect. It's important to note that

3 (Pages 9 to 12)



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1 because this is a franchise agreement, the licensee  
2 under this agreement is independent contractor, so there  
3 are no requirements, the way you're using them, as to  
4 how someone would answer the telephone as per the  
5 franchise agreement. There, there are -- there is  
6 another manual which sets out some expectations that the  
7 brand has as to how the phone would be answered. But we  
8 cannot control how that phone would be answered.

9 Q. You're talking about the Brand Standards Manual,  
10 correct?

11 A. Yes.

12 Q. And I have that in front of me. Do you have  
13 that, there?

14 MR. MERRIWEATHER: I can put it in front of  
15 the witness.

16 MR. NEMEROFF: Yes, please.

17 Q. Do you have that in front of you, ma'am?

18 A. Yes, I do.

19 Q. It says Wyndham Hotel and Resorts. And in the  
20 middle it has Brand Standards Manual, correct?

21 A. Correct.

22 Q. And then it has 2007, and then it says updated as  
23 of September 25th, 2007, correct?

24 A. Correct.

25 MR. NEMEROFF: Okay. And let's mark that as

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1 in Attachment-A and the System to operate the Hotel as  
2 an All Inclusive Wyndham Hotel as set forth in  
3 Attachment-A."

4 I read that correctly?

5 A. Yes, you did.

6 Q. And if you look at -- if we go to Attachment-A --  
7 I apologize, because there is no pages on here. But if  
8 you take a look back to Attachment-A --

9 MR. MERRIWEATHER: It will be further back  
10 than that.

11 A. I'm there.

12 Q. Okay. It says, "Attachment-A". Then it says,  
13 "selected terms," correct?

14 A. Correct.

15 Q. And the next line says, "Wyndham Hotel Tier and  
16 Proprietary Mark," with a colon. And right next to it  
17 it says, "Wyndham Resort," comma, "an All-Inclusive  
18 Hotel," correct?

19 A. It does say that.

20 Q. That is what Islander properties is allowed to  
21 use to market their hotel; isn't that correct?

22 A. Well, I want to ask your question completely.  
23 Section 3 does state, "and the system to operate the  
24 hotel." And it is the system that the licensee has been  
25 permitted -- been granted permission to operate the

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1 Exhibit Number 3. And I think it's a 94-page document,  
2 correct?

3 THE WITNESS: The last page of my copy says  
4 94.

5 (Whereupon, Deposition Exhibit No. 3 was  
6 marked for identification.)

7 BY MR. NEMEROFF:

8 Q. Very good. I want to make sure we're on the same  
9 page, so to speak. Let's go back to Exhibit Number 1,  
10 the franchise agreement. Ma'am, I guess there is no  
11 pages on it. If you go to the fourth page in, which at  
12 the top should say, "Wyndham Hotel Franchise Agreement"?

13 A. Yes.

14 Q. Okay. And, basically, this is an agreement that  
15 your company entered into with Islander Properties to  
16 run an all inclusive Wyndham Hotel in Cozumel, Mexico,  
17 correct?

18 A. That is incorrect, the way you are phrasing it.  
19 We would not enter into an agreement to run a hotel. We  
20 do not run hotels.

21 Q. Let's go to Line Number 3. And it says -- and if  
22 I'm wrong, correct me -- "Franchisee holds a leasehold  
23 interest in the hotel identified in the Attachment-A to  
24 this agreement," in parentheses, "hotel, and desires to  
25 obtain a license to use the Proprietary Marks set forth

Page 16

1 Wyndham system, not -- it does not reference the  
2 operation of their hotel. And the Wyndham Hotel Tier  
3 and Property Mark that you're referencing in  
4 Attachment-A speaks to the brand that the licensee has  
5 been provided the permission to utilize.

6 Q. Correct. So when Islander Properties markets its  
7 hotel, this agreement allows it to say it is a "Wyndham  
8 Resort," comma, "All Inclusive Hotel," correct?

9 A. That is correct.

10 Q. And, in fact, that's the only way they are  
11 allowed to market that property, is as a "Wyndham  
12 Resort," comma, "an All-Inclusive Hotel," using that  
13 brand?

14 A. I don't believe I would necessarily agree with  
15 how you phrased that sentence. I would not agree with  
16 the way you said it.

17 Q. Well, when they take out an advertisement that  
18 says, "Come to our hotel," it has to say it is a  
19 "Wyndham Resort," comma, "an All-Inclusive Hotel," as  
20 part of its name, correct?

21 A. I would say, it is more fair to say that they  
22 have been granted permission to utilize, Wyndham Resort,  
23 an all-exclusive hotel, but the agreement does provide  
24 for waivers. So I could not say that this is the only  
25 way they can identify themselves.

4 (Pages 13 to 16)



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1 Q. Are you aware of any waiver that was granted as  
2 of October 16th, 2007, in terms of identifying  
3 themselves in some way, other than, "Wyndham Resort, an  
4 All-Inclusive Hotel"?

5 A. I am not aware at this time of any waiver of that  
6 nature.

7 Q. If you go back to the franchise agreement, that  
8 first page we were looking at where we had been talking  
9 about Number 3?

10 A. Yes.

11 Q. Okay. If you look at the bottom of the page  
12 where it is entitled, "Grant of Franchise," correct?

13 A. I have it, yes.

14 Q. Well, I guess, first of all, you say -- and I  
15 apologize for jumping back and forth -- but in your  
16 Affidavit, Exhibit Number 2, under Number 4 you write  
17 under oath: "At no time on or prior to October 16th,  
18 2007, did WHR operate, manage, control, own or otherwise  
19 occupy the Islander Properties Hotel in Cozumel, Mexico,  
20 described in Plaintiff's Complaint."

21 That's what was written there, correct?

22 A. Correct.

23 Q. Did you prepare this or did a lawyer prepare  
24 this?

25 A. This was prepared with the assistance of our

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1 Counsel.

2 Q. Okay. Well, did they actually type this up?

3 A. These are absolutely my words.

4 Q. No. That's not what I asked you. Did the law  
5 firm type these up?

6 A. A law firm did not -- not sure.

7 Q. If the law firm didn't type it up, you don't know  
8 if the law firm typed it up or not?

9 A. I am not sure.

10 Q. Okay. Do you know whether the law firm typed  
11 these up and then gave them to you for your approval, or  
12 did you give them the information first, and then they  
13 typed them up?

14 MR. MERRIWEATHER: I think the difficulty  
15 here is Valerie doesn't want to impinge on the  
16 attorney/client privilege. That she may have had  
17 communications with in-house Counsel.

18 MR. NEMEROFF: There is no privilege here in  
19 terms of who manufactured a document. It just has to do  
20 with the actual communication between them. And so I'm  
21 not asking her what was said between them. I'm asking  
22 them to produce this document.

23 A. When you say who produced it -- could you  
24 rephrase that question, please?

25 Q. Yes. Did you type this up, yourself, ma'am?

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1 MR. DELY: Objection. Asked and answered.

2 Q. You can answer.

3 A. I did not sit at a computer and type this myself.

4 Q. Did your secretary type it up?

5 A. No.

6 Q. Did anybody that you can identify by name  
7 affiliated with Wyndham type this up?

8 MR. MERRIWEATHER: If you know.

9 A. I'm not sure.

10 Q. Okay. Ma'am, wasn't it, in fact, typed up by the  
11 law firm that represents Wyndham here in Chicago and  
12 then sent to you for approval?

13 MR. DELY: I just object to the form of that  
14 question, with the words, "approval," added to the end.

15 Q. I assume, by signing it, you approved it,  
16 correct? You signed this under oath?

17 A. The -- okay. I just want to make sure I'm  
18 answering your question, and you're asking a lot. And I  
19 want to answer each question as you ask it.

20 Q. Let me rephrase. First of all, you signed this  
21 document under oath and under penalty of perjury; is  
22 that correct?

23 A. Yes, I did.

24 Q. I assume, by signing this document you approved  
25 the contents in terms of it was truthful, at least, in

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1 your opinion, correct?

2 A. I would not say that. These are my words, and  
3 this is my statement.

4 Q. Okay. The question is: Did the law firm  
5 representing Wyndham here in Chicago type this up and  
6 send it to you?

7 MR. DELY: And I will object as asked and  
8 answered. She's answered it already. She said she  
9 didn't know.

10 MR. NEMEROFF: You can answer, ma'am.

11 Q. Okay.

12 A. I could not answer. I don't know.

13 Q. Was this the first draft or were there revisions  
14 made to this affidavit?

15 A. What I do know is these are my words. This is my  
16 statement, and it is my signature.

17 Q. That's not what I asked you, ma'am. If you can  
18 limit your answers to my questions, I would really  
19 appreciate it.

20 My question is: Is this the first draft of the  
21 affidavit or were there -- was a draft sent to you and  
22 then corrections were made to the original draft?

23 A. I'm not sure if I can answer, because I don't  
24 know if it is an affidavit if I don't sign it. So I'm  
25 not sure if I can answer your question correctly.

5 (Pages 17 to 20)

Page 21

1 Q. Before you signed it, you wanted to make sure it  
2 was right, correct? Did you hear my question?  
3 A. I did.  
4 (Pause.)  
5 Q. Are you going to respond to my question?  
6 A. I will.  
7 Q. Just for the record, I want to make sure you're  
8 not conferring with Counsel there? Are you?  
9 MR. MERRIWEATHER: No. The witness is not  
10 conferring with me. The witness is thinking about your  
11 question, and, obviously, deciding on how to respond.  
12 MR. NEMEROFF: That's fine. I want to make  
13 sure. I'm not there, so I don't have the opportunity to  
14 observe.  
15 A. I apologize. To be honest, I'm trying to  
16 understand the question you're asking me.  
17 Q. My question is really simple. First of all, let  
18 me rephrase my question. Were you given a draft of the  
19 affidavit -- well, first of all, start again. This  
20 affidavit that is signed in its present form, is that  
21 the original affidavit that was presented to you, or  
22 were you given drafts that you asked for corrections to  
23 be made before signing?  
24 A. I, I do not recall drafts in the way that you're  
25 using the term of Affidavits. And, again, I'm not sure

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1 if it is an affidavit, if I haven't signed it.  
2 Q. My point is: Before you signed it, did you get a  
3 draft and say, oh, there's corrections that need to be  
4 made. Let's not play semantics here, ma'am. I'm trying  
5 to be clear. I think you're trying to play a game of  
6 semantics, which I'm not going to tolerate. The  
7 question is, until you signed it, anything previously to  
8 that would be a draft. Did you ever ask anybody to make  
9 changes to any drafts of an affidavit that ultimately  
10 resulted in Exhibit Number 2?  
11 A. Not that I recall.  
12 Q. All right. Under Number 4, where it says, "At no  
13 time on or prior to October 16th, 2007, did WHR operate,  
14 manage, control or otherwise occupy."  
15 Does that also hold true for Wyndham -- I'm  
16 sorry. Apologize. Wyndham Hotel Group International,  
17 Inc.?  
18 A. Yes. This same statement would be true for  
19 Wyndham Hotel Group International, Inc..  
20 Q. Now, let's go back to the franchise agreement  
21 where it says, "Grant of Franchise".  
22 A. Yes.  
23 Q. Okay. If you look at Number A, where it says,  
24 "grant," you with me?  
25 A. Yes.

Page 23

1 Q. You would agree with me that the obligation is  
2 that -- excuse me -- that the "Franchisee undertakes the  
3 obligation to operate the hotel as an all-inclusive  
4 Wyndham Hotel in a manner compliant with, under and  
5 subject to franchisor's standards, specifications,  
6 policies and procedures at and only at the location  
7 specified in Attachment-A."  
8 You would agree that what I read is accurate,  
9 correct?  
10 MR. MERRIWEATHER: I would like to note,  
11 that wasn't the full sentence.  
12 MR. NEMEROFF: I understand that.  
13 A. I was going to say, I think you missed something  
14 in the beginning.  
15 Q. So we don't play a game of semantics, we're going  
16 to be here for seven hours at this rate. So if you guys  
17 want to play this game, I mean, I will sit for seven  
18 hours and take this dep.  
19 MR. DELY: You're making recitals to games.  
20 Nobody is playing games here. She is answering your  
21 questions.  
22 MR. NEMEROFF: Well --  
23 MR. DELY: If you want her to agree what you  
24 are reading, read the entire statement.  
25 Q. Ma'am, would you agree with me that Paragraph

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1 1-A -- do you see where I'm referring to, "Grant of  
2 Franchise" as under a "grant".  
3 Do you see that, ma'am?  
4 A. I see Paragraph 1-A, yes.  
5 Q. Okay. You would agree with me that this  
6 obligates the franchisee, assuming an agreement is  
7 reached, to operate the hotel in Cozumel, Mexico, as an  
8 all-inclusive Wyndham Hotel in a manner compliant with  
9 and subject to franchisor's standards, specifications  
10 and policies and procedures only at that Cozumel,  
11 Mexico, hotel, correct?  
12 A. I would say, the way that you phrased it is  
13 incorrect, because it is important to note that this  
14 franchise agreement, the grant to the franchisee upon  
15 the terms and conditions contained in this agreement.  
16 Q. Correct. Are you aware of anything in this  
17 agreement -- ultimately, this agreement was signed,  
18 correct?  
19 A. Yes. This agreement was signed.  
20 Q. Between the respective franchisor and franchisee,  
21 correct?  
22 A. Yes.  
23 Q. Are you aware of anything in this agreement that  
24 would take away the obligation of the franchisee to  
25 operate the Cozumel, Mexico, hotel as an all inclusive

6 (Pages 21 to 24)

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1 Wyndham Hotel in a manner compliant with, under and  
2 subject to franchisor's standards and specifications and  
3 policies and procedures at and only at the Cozumel,  
4 Mexico, location where we alleged this incident  
5 occurred?

6 A. Yes.

7 Q. Okay. Tell me what modifications have been made  
8 and where you find that in the agreement.

9 A. First, I need to know, I didn't say that any  
10 modifications had been made. However, there are  
11 sections that discuss termination and should this  
12 agreement be terminated, the licensee would no longer be  
13 obligated as per the licensee agreement.

14 Q. As of October 16th, 2007, this agreement wasn't  
15 terminated, correct?

16 A. Correct.

17 Q. Can you now answer the previous question I asked?  
18 MR. NEMEROFF: If the court reporter  
19 wouldn't mind reading my previous question, I would  
20 appreciate that.

21 (Whereupon, the Court Reporter read back the  
22 record as requested.)

23 A. I, I would have to repeat my answer. That I did  
24 not say that there had been modifications made.

25 Q. Right. My question was as of October 16th, 2007,

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1 are you aware of any modifications to the contract that  
2 would not require the franchisee to operate the Cozumel  
3 resort as an all-inclusive Wyndham Hotel in the manner  
4 compliant with under and subject to franchisor's  
5 standards, specifications, policies and procedures?

6 A. I, I did not say that mod -- that  
7 modifications --

8 Q. Just answer my question.

9 MR. MERRIWEATHER: Please, don't interrupt  
10 the witness.

11 A. I did not say that modifications would be  
12 required to remove the obligation under the agreement.  
13 I stated that to your question as to whether or not  
14 anywhere else in the agreement there would be a  
15 provision that would remove the obligation, my answer is  
16 still, yes, because the agreement contains termination  
17 language.

18 Q. Okay. My question is, ma'am, that termination --  
19 there's been no termination that's ever been exercised;  
20 is that correct?

21 A. Could you rephrase the question, please?

22 Q. Are you aware of any termination of this  
23 agreement by either of the parties pursuant to any terms  
24 of this agreement?

25 A. No.

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1 Q. Okay. Good. On October 16th, 2007, you would  
2 agree with me that the franchisee was obligated to  
3 operate the hotel in Cozumel, Mexico, as an  
4 all-inclusive Wyndham Hotel in a manner compliant with,  
5 under and subject to the franchisor, Wyndham Hotel Group  
6 International Inc.'s standards, specifications, policy  
7 and procedures at that hotel only, correct?

8 A. I would not agree with what you said. It would  
9 be correct to state that under the terms and conditions  
10 contained in the agreement, and then further on, the  
11 franchisee did undertake the obligation to operate the  
12 hotel as an all-inclusive Wyndham Hotel in the manner  
13 compliant and as per --

14 Q. On October 16th, 2007, and then the dates before  
15 that, after this agreement was entered into, the  
16 franchisee was required to follow Wyndham standards,  
17 correct?

18 (Pause.)

19 A. It is correct to say that on the date that you  
20 referenced, the franchisee was required to comply with  
21 the terms of the agreement.

22 Q. Now, ma'am, answer my question, please.  
23 Otherwise, we're going to terminate right now. I am  
24 going to go to the Judge and force you to answer the  
25 questions. I'm not going to play this game.

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1 My question was very simple. Please, answer my  
2 question. The answer is yes or no.

3 A. Could you repeat the question, please?

4 MR. NEMEROFF: Could the court reporter,  
5 please, repeat my question? I asked for a yes or no  
6 response.

7 (Whereupon, the Court Reporter read back the  
8 record as requested.)

9 A. The way you phrased the question, it is  
10 incorrect.

11 Q. Okay. So if the agreement says that the  
12 franchisee is required to follow the franchisor's  
13 standards, you disagree with the plain language of the  
14 agreement, correct?

15 A. Could you please direct me to where it says,  
16 "required to follow"?

17 Q. Well, do you believe that compliant, requires and  
18 follows are the same thing, or do you think those are  
19 different terms, ma'am, in terms of their meaning?

20 A. I believe, that the phrase, "compliant," can't be  
21 singled out. It has to be read in the section's  
22 entirety.

23 Q. Do you know what the word, "compliant," means,  
24 ma'am?

25 A. I believe so.

7 (Pages 25 to 28)

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1 Q. What is your definition of the word, "compliant?"

2 A. If it were in a standard dictionary, it would  
3 probably refer to the word, "follow".

4 Q. Ma'am, on October 16th of 2007, and all of the  
5 dates after this agreement was signed --

6 MR. DELY: Why don't we just say from June?

7 MR. NEMEROFF: Thank you. Better way.

8 MR. DELY: June 29th, 2007.

9 Q. From June 29th, 2007, when this agreement was  
10 signed, through October 16th, 2007, was the franchisee  
11 required to be compliant with and subject to the  
12 franchisor's standards?

13 A. The franchisee was required to be compliant with,  
14 under and subject to the franchisor's standards. That  
15 is partially correct.

16 Q. Okay. And what is the date? On June 29th, 2007,  
17 and every day throughout October 16th of 2007, was the  
18 franchisee required to be compliant with and subject to  
19 the franchisor's specifications?

20 A. As I stated earlier -- want to just answer  
21 completely -- upon terms and conditions contained in  
22 this agreement, and then excluding the sentences, for  
23 the sake of brevity, the franchisee was required to  
24 operate the hotel in a manner compliant with, under and  
25 subject to franchisor's standards, among other things.

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1 Q. Well, my question was specifically now with the  
2 specifications, ma'am. Could you, please, answer my  
3 question?

4 MR. DELY: Specifications was a vague term.

5 MR. NEMEROFF: It is the word in the  
6 contract, Counsel. I'm not making it up. I'm not  
7 making it vague. It is what the contract requires.

8 MR. DELY: I'm stating the basis of my  
9 objection.

10 Q. Can you answer my question, ma'am, specifically,  
11 as to specifications?

12 A. I'm sorry. Could you repeat the question?

13 Q. Sure. Ma'am, from June 29th, 2007, through  
14 October 16th, 2007, would you agree with me that the  
15 franchisee was required to be compliant with, under and  
16 subject to the franchisor's specifications? Yes or no,  
17 ma'am.

18 A. That's partially correct, but I -- to answer that  
19 question correctly, I would have to read the entire  
20 section to say that your statement -- to answer your  
21 question completely.

22 Q. You've been identified as the person with the  
23 most knowledge about this agreement -- are you -- at  
24 Wyndham, or should we be deposing somebody else with  
25 more knowledge?

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1 A. I am the person with the most knowledge about  
2 this agreement.

3 Q. Ma'am, on June 29th, 2007, through October 16th,  
4 2007, would you agree with me that the franchisee was  
5 required to be compliant with, under and subject to the  
6 franchisor's policies?

7 A. Again, I don't think it is possible to answer  
8 your question without reading the, the language  
9 contained before that. Because under the terms and  
10 conditions contained in this agreement is an important  
11 part of the question that you're asking me. That this  
12 agreement is an independent contractor agreement.

13 Q. Can you answer my question, ma'am, or should I  
14 certify the question and ask Judge Levkow (ph) to make a  
15 ruling whether you should answer or not and ask the  
16 Court to award me attorney's fees and costs --

17 MR. MERRIWEATHER: Counsel, you don't have  
18 to badger the witness. She was trying to answer your  
19 question.

20 MR. NEMEROFF: She hasn't answered my  
21 question. You know what? I'm not going to deal with  
22 two lawyers going back and forth with me. There is one  
23 Counsel here that is of record for Wyndham, so if there  
24 is going to be any objections or any banter, it is going  
25 to be by the Counsel of record who is sitting in front

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1 of me, who, certainly, has a right to make objections.  
2 I'm not going to go back and forth with two of you.

3 MR. MERRIWEATHER: I'm not objecting.  
4 You're painfully taking this very slowly. I'm trying to  
5 help things here.

6 MR. NEMEROFF: I'm asking very simple  
7 questions and I'm not getting direct answers. We're  
8 going to be here as long as it takes to get direct  
9 answers. Otherwise, I am going to get the Judge to get  
10 me to get direct answers. There is nothing complex  
11 about my questions. Why don't we have one Counsel of  
12 Wyndham, because he is of record. I suggest it is  
13 Mr. Dely. This is the only person licensed to practice  
14 in the Northern District of Illinois.

15 MR. MERRIWEATHER: I'm not objecting. She  
16 has to be allowed to answer your question. You  
17 interrupted her while she is in the middle of her  
18 response. I've not made one objection. You can go  
19 through the entire record.

20 MR. NEMEROFF: Are you done, sir?

21 MR. MERRIWEATHER: I am done.

22 MR. NEMEROFF: Okay.

23 Q. Ma'am, I am going to reask you the question, and  
24 I am going to ask you to answer yes or no.

25 From June 29th, 2007, through October 16th, 2007,



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1 was the franchisee who operated the Cozumel, Mexico,  
2 all-inclusive Wyndham Hotel required pursuant to Section  
3 1-A of the contract to do so in a manner compliant with,  
4 under and subject to the franchisor's policies?

5 A. Upon the terms and conditions contained in the  
6 agreement, the non-exclusive right and franchise, the  
7 franchisee undertakes the obligation to operate the  
8 hotel as an all-inclusive Wyndham Hotel in a manner  
9 compliant with, under and subject to franchisor's  
10 standards, specifications and et cetera.

11 Q. Ma'am, maybe you're not hearing me when I asked  
12 you. I had asked you the question specifically about  
13 policies. Would you just answer my questions so we can  
14 move on, because, frankly, if you are not going to do  
15 it, we are going to keep going at it until I get you to  
16 answer my question. I know you want to answer what you  
17 want. I am -- my question was very simple. I would  
18 appreciate you responding to my question and not going  
19 off on your own tangent.

20 MR. NEMEROFF: Could I ask the court  
21 reporter to, please, re-read my question that was  
22 specific to policies?

23 (Whereupon, the Court Reporter read back the  
24 record as requested.)

25 A. Subject to the language that appears before the

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1 phrase, "policies and procedures," and the language that  
2 appears after it, yes.

3 Q. Thank you. Ma'am, with regard to, basically, the  
4 same question, pursuant to Section 1-A of the franchise  
5 agreement, was the franchisee required to operate the  
6 Cozumel, Mexico, all-inclusive Wyndham Hotel in a manner  
7 compliant with, under and subject to the franchisor's  
8 procedures from June 29th, 2007, through October 16th,  
9 2007?

10 A. Subject to the language that appears before the  
11 word, "procedures," and after it, yes.

12 Q. Going to the -- actually, there are some pages  
13 with page numbers. I apologize. On the bottom of this  
14 agreement it says Page Number 3. Could you turn to  
15 that? It is, like, towards the middle, bottom of the  
16 page. It is a little more to the left.

17 A. I'm on Page 3.

18 Q. Okay. If you look at the bottom where it says  
19 under Number B, Royalty?

20 A. Yes.

21 Q. Okay. You would agree with me that the  
22 franchisee pursuant to this agreement was required to  
23 pay the franchisor a monthly royalty fee of three  
24 percent of the gross package revenue of the hotel?

25 A. Yes.

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1 Q. Okay. And pursuant to Section C on that same  
2 page, 3-C, there was also a marketing fee, correct?

3 A. Correct.

4 Q. And the franchisee was required to pay the  
5 franchisor on a monthly basis an amount equal to 1.5  
6 percent of the gross package revenues of the hotel as a  
7 marketing fee, correct?

8 A. Correct.

9 Q. In addition to that, under Section D, 3-D, there  
10 was a reservation system fee, correct?

11 A. Correct.

12 Q. And in addition to that, under 3-E, there was a  
13 national sales fee, correct?

14 A. Correct.

15 Q. And then under 3-F there was also a regional  
16 marketing fee, correct?

17 A. Correct.

18 Q. And those were all fees the franchisee was  
19 required to pay to the franchisor pursuant to the terms  
20 of the agreement, correct?

21 A. Correct.

22 Q. Now, if you go to Page 5 of the agreement on the  
23 bottom under Section-I where it says payment in U.S.  
24 dollars?

25 A. I see it.

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1 Q. You would agree with me that under the terms of  
2 the contract, unless the franchisor instructed the  
3 franchisee otherwise in writing, all payments pursuant  
4 to this contract are to be made in U.S. dollars?

5 A. Correct.

6 Q. And, in fact, the franchisee was required to  
7 maintain a bank account in dollars located outside the  
8 United Mexican States, correct?

9 A. Could you repeat that question, please?

10 Q. Sure. Under the terms of this agreement, the  
11 franchisee was required to maintain a bank account in  
12 dollars located outside the territory of the United  
13 Mexican States? The fourth and fifth, fourth and fifth  
14 line of Section 1, of Section-I, rather?

15 A. I -- I disagree with the way you've phrased the  
16 requirement.

17 Q. Okay. Well, let me read the whole section, then,  
18 under Section-I. Unless franchisor instructs Franchisee  
19 otherwise in writing, all payments shall be made in  
20 dollars. Franchisee agrees at Franchisor's request to  
21 sign an Electronic Payment Authorization which  
22 authorizes franchisor to automatically debit  
23 franchisee's bank account in dollars located outside of  
24 the territory of the United Mexican States on the dates  
25 payments are due, for any recurrent fees and other

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1 amounts due and owing under the Agreement and any other  
2 agreements between Franchisee and Franchisor.  
3 I read that correctly?  
4 A. You did.  
5 Q. It goes on to say that above authorization does  
6 not release Franchisees from its obligation to make all  
7 timely payments due to Franchisor under the this  
8 agreement. Next sentence: Franchisee shall maintain a  
9 bank account with sufficient funds on deposit in dollars  
10 outside the territory of the United Mexican States to  
11 cover all required and permitted withdrawals.  
12 A. You read that correctly.  
13 Q. You would agree with me that this agreement  
14 requires the franchisee to maintain a bank account in  
15 U.S. dollars outside the territories of the United  
16 Mexican States to pay it's obligations due to the  
17 franchisor?  
18 A. Could you repeat that question, please?  
19 Q. Sure. You would agree that pursuant to this  
20 section of the agreement, Section I-1, the franchisee  
21 was required to maintain a bank account in dollars  
22 outside the territory of the United Mexican States to  
23 cover the required payments due to the franchisor?  
24 A. Generally, that's correct.  
25 Q. Looking at Page Number 9 of the agreement -- tell

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1 A. Correct.  
2 Q. However, the next sentence says, "Any lease,  
3 management agreement or other arrangement for operating  
4 the Hotel or any part thereof, including, without  
5 limitation, food and beverage service facilities, shall  
6 be subject to Franchisor's prior written consent."  
7 I read that correctly, right, ma'am?  
8 A. You did.  
9 Q. All right. Let's go to Page Number 10. Are you  
10 with me, ma'am?  
11 A. Oh, yes, I am.  
12 Q. On Section 6-A, it says -- it is entitled,  
13 "Adherence to System Standards," correct?  
14 A. Correct.  
15 Q. And the agreement states: "Franchisee  
16 understands and acknowledges that each and every  
17 standard specification, policy and procedure of the  
18 System is essential in order to maintain the quality and  
19 guest service of Wyndham Hotels and to enhance public  
20 acceptance of and demand for Wyndham Hotels."  
21 I read that correctly?  
22 A. You did.  
23 Q. And then it says, "Franchisee shall conduct its  
24 operations in strict conformity with the standards,  
25 specifications, policies and procedures set forth in the

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1 me when you're with me.  
2 A. I'm there.  
3 Q. Looking under Section B-1 of that page, you would  
4 agree with me that all personnel employed at the hotel  
5 in those positions designated by franchisor to receive  
6 training shall attend and successfully complete such  
7 initial and other training programs as franchisor may  
8 from time to time require.  
9 I read that correctly, right, ma'am?  
10 A. I'm not sure. Could you read that again, please?  
11 Q. Sure. Under Section B-1, the first sentence  
12 says, "All personnel employed at the Hotel in those  
13 positions designated by Franchisor to receive training  
14 shall attend and successfully complete such initial and  
15 other training programs as Franchisor may from time to  
16 time require."  
17 I read that correctly, right, ma'am?  
18 A. You did read that correctly.  
19 Q. And I apologize, ma'am, let me go back to Page 7.  
20 I'm sorry. I kind of skipped over one part. If you  
21 look at Section 5-A --  
22 A. I'm there.  
23 Q. Okay. First sentence says, "Franchisee will at  
24 all times exercise management, control over the Hotel,"  
25 correct?

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1 manual or otherwise in writing, which standards,  
2 specifications, policies and procedures shall be applied  
3 consistently to all Wyndham Hotels in the same division  
4 as the Hotel," correct?  
5 A. Okay.  
6 Q. I read that correctly, didn't I?  
7 A. I missed the last section that you read.  
8 Q. Franchisee shall conduct its operations in strict  
9 conformity with the standards, specifications, policies  
10 and procedures set forth in the manual or otherwise in  
11 writing which standards, specifications, policies and  
12 procedures shall be applied consistently to all Wyndham  
13 Hotels in the same division as the Hotel, correct?  
14 A. The agreement does say that.  
15 Q. Okay. And this agreement is the binding document  
16 that regulates the relationship, correct?  
17 MR. DELY: Objection. Asked and answered.  
18 You can go ahead and answer, again.  
19 A. This is the agreement that sets forth the  
20 franchisee, franchisor relationship.  
21 Q. Now, the next sentence of that paragraph does  
22 give some latitude for deviation. The policies  
23 procedures, standards, et cetera, correct?  
24 A. I, I disagree with the phrase, "some latitude,"  
25 because as an independent contractor, the franchisee has

10 (Pages 37 to 40)

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1 complete latitude to follow or not follow any part of  
 2 the manual.  
 3 Q. Really? Okay. Has Wyndham Hotels ever sued one  
 4 of its franchisees concerning a dispute over a  
 5 franchisee not following the terms of its contract?  
 6 A. The terms of the agreement?  
 7 Q. Yes.  
 8 A. The franchise agreement?  
 9 Q. Yes.  
 10 A. I believe so.  
 11 Q. Okay. Has Wyndham Hotels ever sued one of its  
 12 franchisees for not conforming to its standards,  
 13 specifications, policies or procedures?  
 14 A. I don't recall whether that was the basis of a  
 15 suit.  
 16 Q. Okay. Have you been involved in terms of as a  
 17 witness in any other litigation involving Wyndham and  
 18 its franchise agreements?  
 19 MR. MERRIWEATHER: Just to clarify, you  
 20 mean, the Wyndham brand or Wyndham Hotel Group?  
 21 MR. NEMEROFF: Whoever franchises on behalf  
 22 of Wyndham.  
 23 A. Could you rephrase or could you just expand on  
 24 involved in litigation, please?  
 25 Q. Well, have you ever been asked to write an

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1 affidavit in any other case, other than this one?  
 2 A. I have provided affidavits for cases other than  
 3 this one.  
 4 Q. How many, ma'am?  
 5 A. I could not say.  
 6 Q. More than ten?  
 7 A. I'm not sure.  
 8 Q. More than 100?  
 9 A. No.  
 10 Q. Okay. So somewhere between 1 and 100 would be a  
 11 fair estimate, right?  
 12 A. That's a bit broad, but it would be accurate.  
 13 Q. We know it is not one, because you did it in this  
 14 case. There's been at least one other case. There's  
 15 not one other time. This is something you do as a  
 16 normal part of your job, correct?  
 17 A. I do provide affidavits as part of my  
 18 responsibilities.  
 19 Q. And when you give those affidavits, is it always  
 20 in cases where somebody is suing Wyndham for either  
 21 personal injury or wrongful death?  
 22 A. No.  
 23 Q. Are they sometimes in disputes between the  
 24 franchisor and the franchisee?  
 25 A. Yes.

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1 MR. NEMEROFF: You know what? I'll send  
 2 over a request. I would like to get all affidavits that  
 3 have been served that have been signed by this witness?  
 4 MR. DELY: I don't see the relevance for the  
 5 motion for --  
 6 MR. NEMEROFF: I'll send you a written  
 7 request.  
 8 THE WITNESS: Before you ask a question,  
 9 could I take a break, please?  
 10 MR. NEMEROFF: Sure. Absolutely.  
 11 (Brief recess.)  
 12 MR. MERRIWEATHER: We're ready, here.  
 13 BY MR. NEMEROFF:  
 14 Q. All right. I think we were talking about  
 15 lawsuits that you've been involved in. Ma'am, are you  
 16 currently, as far as writing the affidavits, are you  
 17 currently involved in -- are there any current cases  
 18 that are pending in any court in any jurisdiction in  
 19 which there is a dispute between the franchisor and the  
 20 franchisee over their following the standards,  
 21 specifications, policies and procedures as one of the  
 22 issues of the lawsuit?  
 23 A. I don't think I can accurately answer that  
 24 question without Counsel. I'm not sure.  
 25 Q. Okay. Have you ever testified in a deposition

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1 concerning those issues as it relates to a lawsuit  
 2 involving a franchisor, the franchisor, your employer,  
 3 and the franchisee?  
 4 MR. MERRIWEATHER: Again, just for clarity,  
 5 Wyndham Hotels and Resorts or the Wyndham Hotel Group?  
 6 Because as Valerie testified earlier, Wyndham Hotel has  
 7 nine or ten different hotel brands. Just trying to move  
 8 things along here as to how you want her to answer it.  
 9 MR. NEMEROFF: Either one would be fine with  
 10 me.  
 11 A. Could you repeat the question?  
 12 MR. NEMEROFF: Can the court reporter,  
 13 please, reread my question?  
 14 (Whereupon, the Court Reporter read back the  
 15 record as requested.)  
 16 A. Which issue? I'm sorry.  
 17 Q. Well, let me rephrase the question.  
 18 Ma'am, has Wyndham, the Franchisor, ever revoked  
 19 its license to a franchisee to use the Wyndham brand  
 20 because they weren't complying with the terms of a  
 21 contract, other than payment?  
 22 A. I would not be comfortable answering that  
 23 question from memory.  
 24 Q. You don't -- well, isn't one of your roles this  
 25 would be involved in the litigation as the person with

11 (Pages 41 to 44)



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1 the most knowledge of the franchise agreements?  
 2 A. Correct.  
 3 Q. I'm not asking you to tell me each and every  
 4 case. I'm asking you to answer whether or not that has  
 5 ever occurred.  
 6 A. I would not want to answer that question from  
 7 memory. That is a termination question. Not a  
 8 franchise agreement question.  
 9 Q. Well, one of your jobs is to make sure that the  
 10 franchisee conform to the terms of the franchise  
 11 agreement, correct?  
 12 A. No. And, again, that would not be possible,  
 13 because the franchisee is independent contractor. So,  
 14 no, that would not be my responsibility.  
 15 Q. It wouldn't be hard for you to provide me with a  
 16 list of all litigation Wyndham has been involved in with  
 17 its franchisee, correct?  
 18 A. I would put that question to our inside counsel.  
 19 MR. NEMEROFF: I am going to request on the  
 20 record -- and I'll send a letter to our Counsel here in  
 21 Chicago -- I would like a list including the name of the  
 22 jurisdiction and the lawyers involved of all litigation  
 23 involving Wyndham and its franchisees.  
 24 MR. DELY: Well, I'll take the request.  
 25 What would that possibly have to do with a motion for

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1 forum non-convenience?  
 2 MR. NEMEROFF: It has everything to do with  
 3 it.  
 4 Q. Let me ask you a question, ma'am. With regard to  
 5 6-A where it says, "Franchisee shall conduct its  
 6 operations in strict conformity with the standards,  
 7 specifications and policies and procedures set forth in  
 8 the manual or otherwise in writing, which standards,  
 9 specifications and policies and procedures shall be  
 10 applied consistently to all Wyndham Hotels in the same  
 11 division as the Hotel," you're saying that that's  
 12 discretionary?  
 13 A. I'm saying that as an independent contractor, the  
 14 franchisee has complete control over how they manage and  
 15 operate their facility. Absolutely.  
 16 Q. Ma'am, when is the last time you gave a  
 17 deposition in a lawsuit involving the franchisors suing  
 18 a franchisee because they didn't conform to either the  
 19 standards, specifications, policies or procedures of the  
 20 franchisor?  
 21 A. I'm not sure. Again, because not being Counsel  
 22 for the company, I'm not sure I can answer that question  
 23 correctly without Counsel. I'm not sure if I would be  
 24 correctly answering what the basis of the litigation  
 25 was.

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1 Q. Are you an officer of the corporation?  
 2 A. I am.  
 3 Q. Are you a director?  
 4 A. No.  
 5 Q. You are the contact person between counsel and  
 6 Wyndham any time there is a lawsuit; is that correct?  
 7 A. I don't think that would be correct to say that,  
 8 the way you phrased that, no.  
 9 Q. Ma'am, as a regular part of your job, do you have  
 10 contact with counsel for Wyndham involving lawsuits  
 11 between the franchisors and the franchisees?  
 12 A. Yes.  
 13 Q. Have you testified by way of deposition in the  
 14 Year 2008 involving a dispute between a franchisor and  
 15 -- the franchisor and the franchisee, other than this  
 16 deposition, which doesn't fit in that category?  
 17 MR. DELY: Yes. Just clarify. That's  
 18 not --  
 19 MR. NEMEROFF: Right. I understand that.  
 20 That's why I just clarified that.  
 21 A. Generally, yes.  
 22 Q. Okay. In this year which properties were in  
 23 dispute?  
 24 A. Again, I don't know what you mean by properties  
 25 being in dispute. Could you rephrase the question?

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1 Q. Yes. You said you've testified in deposition in  
 2 the Year 2008 in which there is a pending lawsuit  
 3 between franchisor and franchisee. And my question is:  
 4 Which, which licensed Wyndham properties are we talking  
 5 about?  
 6 A. I -- the question that you asked me, I believe,  
 7 referred to my role for Wyndham Hotel Group and not  
 8 specifically for Wyndham Hotels and Resorts.  
 9 Q. It is for both, ma'am.  
 10 A. Oh, okay.  
 11 Q. Which properties are we talking about?  
 12 A. I cannot recall, by memory.  
 13 Q. You have no idea?  
 14 A. I could not recall by -- from memory.  
 15 Q. So you're the vice-president of a large company  
 16 who is an officer of the corporation who has the most  
 17 knowledge on the issues involving these franchise  
 18 agreements, and you can't tell me under oath, as we sit  
 19 here today, even the name of one property that you've  
 20 testified by way of deposition on this year, correct?  
 21 A. That is correct.  
 22 Q. Okay. But you can certainly provide me with a  
 23 list with them, correct?  
 24 A. I would assume that you would ask Counsel and  
 25 Counsel would provide you as according to whatever

12 (Pages 45 to 48)

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1 procedures they would follow for that question.

2 Q. My question was: If you were asked by Counsel to  
3 provide such a list of all of the times you've  
4 testified, you could provide that to Counsel, correct?

5 MR. MERRIWEATHER: Just say, generally, if  
6 you can provide it, if you know?

7 A. No.

8 Q. You don't remember the cases you testify in?

9 A. That was not the question.

10 Q. I know. It is a new question, ma'am. You don't  
11 remember the cases you've testified in. Is that what  
12 you're trying to tell us?

13 MR. DELY: I want to interject a standing  
14 objection to this entire line of questioning. It is  
15 irrelevant for our purposes here. Form, foundation.  
16 She is not legal counsel for the company. And, quite  
17 frankly, it is just completely irrelevant to this actual  
18 agreement. We're here to discuss the Wyndham Hotel  
19 Group International, Inc., and Islander Properties. And  
20 with that, subject to that objection, standing objection  
21 to all of these questions. She can answer.

22 Q. You can answer, ma'am.

23 A. I do not recall, no.

24 Q. Okay. Do you have a diary or do you use a  
25 Blackberry to keep your dates?

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1 A. I do have a Blackberry.

2 Q. Is that where you keep your appointments on?

3 A. Some, some appointments, yes.

4 Q. Do you keep your appointments in a company  
5 computer system?

6 A. Well, Blackberry owns my -- my company owns my  
7 Blackberry, so I guess.

8 Q. Do you synch that with your company computer?

9 A. No. There is no -- I don't synch it with a date  
10 because --

11 Q. You are going to come into work tomorrow. And I  
12 assume you have things that you have to do during the  
13 day, correct?

14 A. Yes, I do.

15 Q. And you have appointments?

16 A. Correct. Yes, I do.

17 Q. And you diary those appointments, correct?

18 A. Sometimes I do and sometimes I do not.

19 Q. You, yourself, diary them, sometimes, in your  
20 Blackberry, correct?

21 A. Sometimes, yes. Sometimes, no.

22 Q. Does anybody at the company maintain a diary for  
23 your schedule, as well?

24 A. Other than me, no.

25 Q. Okay. For each of these legal cases that Wyndham

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1 is involved in, you keep a file, correct?

2 A. I'm not sure what you mean by that question,  
3 please.

4 Q. Exactly what I just said, ma'am. You keep a  
5 paper file of each of these legal cases that you're  
6 involved in for Wyndham, correct?

7 MR. DELY: Hold on. I'm objecting to form.  
8 Does she specifically keep a file or does Wyndham keep a  
9 file?

10 Q. Let's start with you, first, ma'am. Do you  
11 maintain a file for each of these legal cases that  
12 you're involved in on behalf of Wyndham?

13 A. I personally do not maintain legal files for  
14 cases that I am involved in.

15 Q. Does Wyndham maintain a file for legal cases that  
16 you're involved in? And that could be a physical file  
17 in paper or a computer file on a computer?

18 A. I believe, the legal department maintains files.

19 Q. Okay. Thank you. With regard to the term,  
20 "motion to dismiss for forum non-convenience," you're  
21 familiar with that term, correct?

22 A. Yes, I am.

23 Q. And this is not the first case that you've been  
24 involved in in which the Wyndham Hotel -- Wyndham is  
25 trying to have a case dismissed based on forum

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1 non-convenience, correct?

2 A. I'm not recalling right now. So at this moment,  
3 I'm not sure. I don't recall.

4 Q. So you're saying this is the very first time?

5 MR. DELY: Objection. That's not what she  
6 said.

7 Q. Ma'am, other than this legal case have you been  
8 involved in any way, whether it's an affidavit, giving a  
9 deposition, testify at trial, on any legal cases in  
10 which Wyndham has been sued by somebody claiming  
11 personal injury or death?

12 A. Again, I wouldn't want to assume to recall the  
13 specifics.

14 Q. I'm not asking you specifics, right now. I'm  
15 asking whether you've been involved, at all, in any  
16 cases?

17 A. As, as part of my responsibility with the  
18 company, I am involved with cases for the company.

19 Q. When you signed this affidavit, which is Exhibit  
20 Number 2, let's go to Number 8. That WHR agrees and  
21 stipulates to the jurisdiction of a Mexican Court in the  
22 event that this cause is dismissed for forum  
23 non-convenience, correct?

24 A. That's what it says.

25 Q. Why did you put that terminology in your

13 (Pages 49 to 52)

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1 affidavit?  
 2 A. Well, as I discussed earlier, my affidavit was  
 3 prepared with the assistance of counsel.  
 4 Q. I see. So that's something that Counsel put in  
 5 and you signed that the company agrees to do that,  
 6 correct?  
 7 A. That is not correct.  
 8 Q. Okay. Do you read case law as it relates to the  
 9 issue of forum non-convenience?  
 10 A. Do I?  
 11 MR. DELY: Objection to form. Foundation.  
 12 Q. Did you hear me, ma'am?  
 13 A. I'm sorry. Can you repeat the question?  
 14 Q. Do you read case law? Do you know what case law  
 15 is?  
 16 A. Yes. I absolutely do.  
 17 Q. Do you read case law as it relates to the issue  
 18 of forum non-convenience?  
 19 A. I do not know, but I'm sure that I have.  
 20 Q. Did you somehow try to tailor this affidavit to  
 21 what you believe cases require, case law requires to  
 22 have a case dismissed for forum non-convenience?  
 23 A. Did I tailor this statement with respect to that?  
 24 No.  
 25 Q. Okay. Well, let me ask you a question. Why did

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1 you put in under Number 10 that WHR agrees to satisfy a  
 2 final judgment rendered by a Court of Mexico? Why did  
 3 you put that in?  
 4 A. As I stated earlier, this was prepared with the  
 5 assistance of counsel.  
 6 Q. I see. Why did you put in under Number 11 that  
 7 W -- do you know what the statute of limitations is for  
 8 a case in Mexico?  
 9 MR. DELY: Objection. Foundation. She's  
 10 not a Mexican attorney.  
 11 MR. NEMEROFF: You can answer, ma'am.  
 12 A. Do I know what the statute of limitations is for  
 13 Mexico. Is that the question?  
 14 Q. For a personal injury or wrongful death case in  
 15 Mexico?  
 16 MR. DELY: I'll renew my objection.  
 17 MR. MERRIWEATHER: You can answer, if you  
 18 know.  
 19 A. I do not know what it is in Mexico, no.  
 20 Q. Okay. Looking at Number 11 where it says, "WHR  
 21 agrees to exclude from statute of limitations time  
 22 periods, the period of time Plaintiff's claim has been  
 23 pending in the action, and, in addition, any period of  
 24 time during an appeal from the dismissal order prior to  
 25 an order of the 7th Circuit Court of Appeals or the

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1 United States Supreme Court that has the effect of  
 2 making the dismissal order final, as well as the 120-day  
 3 period provided for in Number 9, above."  
 4 I read that correctly, right, ma'am?  
 5 A. Yes, you did.  
 6 Q. Did you put this language in the affidavit or was  
 7 that language put in there by a lawyer?  
 8 A. As I stated earlier, my affidavit was prepared  
 9 with the assistance of Counsel.  
 10 Q. My question was: Did you put that language in  
 11 there, ma'am?  
 12 A. Section 11 is my language and my statement.  
 13 Q. Okay. So you drafted that language, correct?  
 14 A. I did not say I drafted the language.  
 15 Q. My question is: Did you draft that language  
 16 personally?  
 17 A. Again, I'm not sure it is possible to answer that  
 18 question the way you're asking it. This is my  
 19 statement. It is true, to the best of my knowledge, and  
 20 I signed it.  
 21 Q. That is not what I asked you, ma'am. My question  
 22 is: Did you draft the language in Paragraph 11 of your  
 23 affidavit personally? That is a yes or a no, ma'am.  
 24 A. I don't recall how I, with the assistance of  
 25 Counsel, arrived at this language. But this statement

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1 is mine.  
 2 Q. You say the statement is yours. You're saying to  
 3 me that you remember drafting the language of that  
 4 statement, or are you saying that you agree with it, now  
 5 that it's already in the affidavit?  
 6 A. I am saying that this is my statement, and I  
 7 agree that I signed this affidavit.  
 8 Q. All right. But you don't remember whether you  
 9 drafted this language yourself, correct?  
 10 MR. DELY: I'll just object. Asked and  
 11 answered. She said she doesn't remember with the  
 12 assistance of counsel how it came out in its final form.  
 13 Q. You can answer my question, ma'am.  
 14 A. I don't recall exactly how the statement, how I  
 15 arrived at the final language, but I agree that the  
 16 language is mine.  
 17 Q. Okay. Looking at Number 7, you write: "The  
 18 Islander Properties Hotel at Cozumel, Mexico, described  
 19 in Plaintiff's Complaint is independently owned by  
 20 Islander Properties and is operated as a franchisee of  
 21 WHR," correct?  
 22 A. Yes. That is the statement.  
 23 Q. And you signed that under oath that that was true  
 24 and correct, to the best of your knowledge, correct?  
 25 A. Yes. To the best of my knowledge.

14 (Pages 53 to 56)

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1 Q. And I think we determined earlier that, in fact,  
2 Islander Properties Hotel in Cozumel, Mexico, as  
3 described in Plaintiff's Complaint is actually operated  
4 as a franchisee of Wyndham Hotel Group International,  
5 Inc., correct?

6 A. I'm sorry. Can you say that again, please?

7 Q. Ma'am, isn't it a fact that the Islander  
8 Properties Hotel in Cozumel, Mexico, described in  
9 Plaintiff's Complaint is actually operated as a  
10 franchisee not of WHR, but, rather, of Wyndham Hotel  
11 Group International, Inc.?

12 A. Well, as I said earlier, for my purposes,  
13 generally, they're the same.

14 Q. Okay. So you're saying that WHR is the same as  
15 Wyndham Hotel Group International, Inc.?

16 A. Sister companies, but, essentially, the same.

17 Q. Are they legally the same? In other words, are  
18 they the same corporation or are they two separate  
19 corporations?

20 A. I don't know if I could answer whether they're  
21 legally the same.

22 Q. All right. So you're saying to me that Islander  
23 properties hotel in Cozumel, Mexico, as described in  
24 Plaintiff's complaint, is operated as a franchisee of  
25 WHR, correct?

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1 A. Yes. That is correct.

2 Q. Do you have an agreement that was entered into  
3 between WHR and Islander Properties?

4 A. The agreement is with Wyndham Hotels  
5 International.

6 Q. This is with Wyndham Hotel Group International,  
7 Inc., correct?

8 A. Yes.

9 Q. Does Wyndham, either WHR or Wyndham Hotel Group  
10 International, Inc., have any employees that work in  
11 Mexico? Let me rephrase that, because I can only  
12 already anticipate your objection. Does WHR or -- I  
13 keep forgetting the name of the thing. Bear with me a  
14 second. Does WHR or Wyndham Hotel Group International,  
15 Inc., have any employees whose full-time job it is to  
16 work in Mexico, other than to inspect a property or to  
17 open up a new resort or something like that?

18 MR. DELY: I just object to the form. Maybe  
19 break those out one at a time, instead of having one big  
20 compound question. I just object.

21 MR. NEMEROFF: Break down Wyndham Hotel  
22 versus WHR?

23 MR. DELY: Yes. And maybe even go so far as  
24 to go separate, just so we're clear and we don't have  
25 any ambiguity.

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1 Q. Let me say it a different way, ma'am. Do any  
2 employees of WHR ever do any work, at all, in the  
3 country of Mexico?

4 A. I, I believe so.

5 Q. And do any employees of -- and I call Wyndham  
6 Hotel Group WHG?

7 A. Yes.

8 Q. Okay. Thank you. Do any employees of WHG ever  
9 do any work in Mexico?

10 A. I just have to say, I'm hesitating, because I am  
11 not recalling right now whether the employees are of WHR  
12 or WHG, so I -- International. I don't recall right  
13 now.

14 Q. Okay. And that's only because you don't know if  
15 it was WHR or WHG people, correct?

16 A. Correct. If there -- if there was a Wyndham  
17 Hotel R or G person who may have worked in Mexico, I  
18 would not be comfortable stating whether they were WHG,  
19 Inc., or WHR.

20 Q. Okay. But for your purposes, you think that  
21 they're -- they're the same, correct, for purposes of  
22 this franchise agreement?

23 A. For my purposes, generally, the same.

24 Q. Have you ever been to the Wyndham Cozumel Resort,  
25 personally?

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1 A. No.

2 Q. The corporate -- the main corporate offices for  
3 both WHG and WHR are in New Jersey; is that correct?

4 A. Correct.

5 Q. What is that? Parsippany?

6 A. Correct.

7 Q. Does either WHG or WHR maintain any regional  
8 offices in any other part of the United States?

9 A. I don't believe I would characterize anybody  
10 outside of Parsippany as a regional office.

11 Q. Let me take out the regional and go, other than  
12 the Parsippany, New Jersey, offices does WHG and WHR  
13 maintain any offices in any other state in the United  
14 States?

15 A. Could you describe maintain offices, please?

16 Q. Ma'am, have an office.

17 A. The corporate office is in Parsippany.

18 Q. I understand that. That's not my question.

19 Does WHG or WHR have offices any place else in  
20 the United States, other than in New Jersey?

21 MR. MERRIWEATHER: Can we say whether it's a  
22 sales office or operational office?

23 MR. NEMEROFF: Either kind.

24 MR. MERRIWEATHER: I'm just trying to  
25 understand. Maybe it will help her answer.

15 (Pages 57 to 60)

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1 MR. NEMEROFF: Let's go with yes, and then  
 2 we can go further than that.  
 3 MR. DELY: What if yes isn't the answer? If  
 4 yes isn't the answer --  
 5 MR. NEMEROFF: The question is pretty clear.  
 6 Q. Does WHG or WHR have offices in any other state,  
 7 other than New Jersey, for any purpose?  
 8 A. There are Wyndham employees who have an office  
 9 outside of Parsippany.  
 10 Q. Okay. In what states?  
 11 A. I could not recall, from memory.  
 12 Q. Does Wyndham, either WHG or WHR, have an office  
 13 here in the State of Illinois?  
 14 A. I believe that there may be salespeople in  
 15 Illinois, but there would not be operations people  
 16 outside of Parsippany.  
 17 Q. Where is the office for the salespeople in  
 18 Illinois located?  
 19 A. I, I don't recall, specifically. And I'm not  
 20 even sure that there is.  
 21 Q. How would we be able to find that out, ma'am?  
 22 A. If you would request that from Counsel, then I  
 23 would ask to provide it. I would undertake to try to  
 24 provide that.  
 25 Q. Do you travel, at all, in your job outside of New

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1 Jersey?  
 2 A. I do.  
 3 Q. Have you ever traveled to an office here in  
 4 Illinois for your job?  
 5 A. No.  
 6 MR. MERRIWEATHER: Excuse me. It's just two  
 7 minutes to 5:00, our time. So Valerie said she had to  
 8 make a phone call.  
 9 MR. NEMEROFF: Sure. Do you want to take a  
 10 break?  
 11 (Discussion off the record.)  
 12 (Brief recess.)  
 13 BY MR. NEMEROFF:  
 14 Q. Ma'am, does either WHR or WHG maintain any  
 15 offices in the country of Mexico?  
 16 (Pause.)  
 17 A. Not to my knowledge.  
 18 Q. Does WHG or WHR have any full-time employees who  
 19 work in the country of Mexico at all times?  
 20 A. That I don't know.  
 21 Q. Had you ever traveled to Mexico in your business  
 22 capacity for Wyndham?  
 23 A. No.  
 24 Q. Had you ever been to any other office, any other  
 25 Wyndham office, WHG or WHR office, in any place in the

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1 United States, other than New Jersey? You, personally?  
 2 A. No.  
 3 Q. Who in your company would have knowledge about  
 4 where Wyndham, either WHG or WHR, has offices in the  
 5 United States?  
 6 A. That would be me.  
 7 Q. Okay. You're the person with the most knowledge  
 8 at this deposition. You have no knowledge, as we speak.  
 9 Is that what you're saying?  
 10 A. Some of your questions I did not recall.  
 11 Q. Right. That's what I'm saying. You're the  
 12 person with the most knowledge in the company; yet, in  
 13 the deposition you don't recall whether or not WHG or  
 14 WHR has any offices in any other state, other than New  
 15 Jersey, correct?  
 16 A. Could you repeat that question, please?  
 17 Q. Sure. You have been represented -- you're saying  
 18 that you are the person with the most knowledge as to  
 19 where Wyndham has its offices in the United States,  
 20 other than New Jersey. And, yet, as we sit here in this  
 21 deposition, you don't recall where Wyndham -- either WHG  
 22 or WHR, has its offices, correct?  
 23 A. That's not correct.  
 24 Q. Okay. Well, then, tell me, where Wyndham, WHG or  
 25 WHR, have offices other than in New Jersey, please?

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1 A. I am not recalling right now.  
 2 Q. Okay. Well, I don't understand how you don't  
 3 recall any other place. Give me one place.  
 4 A. As I said earlier, there are salespeople who are  
 5 located outside of Parsippany, but that does not mean  
 6 that it is a company office. That's a --  
 7 Q. We'll get to that in a minute. We haven't even  
 8 gotten to where individual salespeople work and whether  
 9 they work out of their homes. We'll get to that in a  
 10 minute. I'm talking about actual offices that are  
 11 either owned or rented by WHG or WHR to allow workers to  
 12 come to work. Are there any such offices in the United  
 13 States, other than in New Jersey?  
 14 A. I -- I'm not recalling right now.  
 15 Q. What would you need to do to get that  
 16 information, if you are the person with the most  
 17 knowledge? For example, is there a company directory?  
 18 A. Actually, not to my knowledge.  
 19 Q. Okay. Well, what would you need to look at,  
 20 ma'am, in order to get that information to tell me  
 21 where -- well, first of all, whether WHG or WHR have any  
 22 offices outside of New Jersey. And, secondly, if they  
 23 do, where?  
 24 A. I would probably need to be comfortable with your  
 25 definition of offices. Because if you are talking about

16 (Pages 61 to 64)



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1 where leases or whether the company has lease  
2 agreements, I would have to do some research. So, at  
3 first, I have to understand what you meant by offices,  
4 and then I would look into it.  
5 Q. Okay. Well, you understand -- well, doesn't have  
6 to be -- could be leased, could be owned. Understand,  
7 Number 1, that's what I'm talking about by offices,  
8 correct?  
9 A. No. I don't think you've given me enough of a  
10 description of what you mean by an office.  
11 Q. You are sitting in a law firm right now. Do you  
12 consider that to be an office?  
13 A. It is an office, yes.  
14 Q. You work in Parsippany, New Jersey. Do you work  
15 in an office?  
16 A. Yes, I do.  
17 Q. There is your definition of office. I know it is  
18 pretty darn common, what we are talking about. I'm not  
19 talking about people working out of their homes. I will  
20 draw that distinction. But other than people working  
21 out of their homes, I'm talking about a facility,  
22 whether it is one room, 50 rooms, whether it is a whole  
23 building, whether it is part of a building, whether you  
24 lease it, whether you own it, whether somebody gives it  
25 to you for free, where WHG and WHR employees go to work?

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1 A. By that definition, I would need to do research.  
2 MR. NEMEROFF: Okay. Okay. I am going to  
3 reserve the right to re-depose this witness on that  
4 question.  
5 Q. And, as we sit here today, you can't even tell me  
6 one place?  
7 A. Again, because you -- as you said, what's leased,  
8 what's owned --  
9 Q. You don't have to draw that distinction, ma'am.  
10 That is all part of the kiten kaboodle of the  
11 definition of office. You don't have to determine  
12 whether it is leased, owned, free or anything. Just a  
13 place where WHG and WHR employees go to work in places  
14 other than New Jersey in the United States, other than  
15 their own home?  
16 A. Yes. To give you a complete answer, I would need  
17 to do research.  
18 Q. I'm not asking for complete right now. I'm  
19 asking for one place.  
20 A. I can't recall, off the top of my head.  
21 Q. Does WHG or WHR have any employees in the State  
22 of Illinois?  
23 MR. DELY: Objection. Asked and answered.  
24 MR. NEMEROFF: I asked her about the  
25 offices. Not employees.

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1 A. I believe so, but I'm not certain.  
2 Q. Do you know how many employees WHG or WHR has in  
3 the State of Illinois?  
4 A. If they are there, I do not know the number.  
5 Q. Do you know whether or not salespeople employed  
6 by WHG and WHR, not all, but some, work out of their  
7 homes?  
8 A. Yes.  
9 Q. Do any of the salespeople report to you?  
10 A. No.  
11 Q. Do any of the sales -- are there other  
12 vice-presidents that salespeople report to?  
13 A. Yes.  
14 Q. Who would be the vice president that salespeople  
15 would report to?  
16 A. I'm not trying to be difficult, but I do need you  
17 to be more specific.  
18 Q. Are there any -- give me, if there is more than  
19 one, tell me more than one. Give me the name of the  
20 vice president of sales, please?  
21 A. There is a senior vice president of sales.  
22 Q. Okay. Who is that?  
23 A. That is Gus Stamoutsus.  
24 Q. I'm sorry. Gus?  
25 A. Gus.

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1 Q. And his -- spell his last name.  
2 A. S-t-a-m-o-u-t-s-u-s.  
3 Q. Okay. And, go ahead. Is there just a vice  
4 president of sales?  
5 A. Yes.  
6 Q. Who would that be?  
7 A. But, no, because that vice president is not  
8 Wyndham VP of sales.  
9 Q. Who was that? What company is that? You're  
10 speaking about some vice president. Who would that be a  
11 vice president of, what company?  
12 A. It -- the way we're -- we are structured, there  
13 are salespeople of responsibility for more than one  
14 brand.  
15 Q. Okay. Of the Wyndham brand, who would be a vice  
16 president of sales, including the Wyndham brand is  
17 included in that responsibility.  
18 A. That would be -- really be more Jeff Dallas.  
19 Q. I'm sorry. Jeff Dallas? Can you spell the last  
20 name?  
21 A. Dallas, like the city.  
22 Q. Like the town?  
23 A. Like the city, yes.  
24 Q. Is Mr. Dallas responsible for the entire United  
25 States or are there vice-presidents of different

17 (Pages 65 to 68)

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1 portions of the United States?

2 A. Jeff Dallas and Jeff -- and Gus Stamoutsus'  
3 responsibilities are not based on region.

4 Q. So in answer to my question they would be  
5 responsible -- they could be responsible for even more  
6 than the United States, but they are -- those two are  
7 responsible for the entire United States as part of  
8 their responsibility, correct?

9 A. They, they would not be responsible routinely for  
10 any sales outside of the United States, in general.

11 Q. Does Wyndham break up its sales territories into  
12 regions?

13 A. Generally, yes.

14 Q. Can you describe for me the different regions?

15 A. No. Not off the top of my head.

16 Q. You have no idea if there is a west region, a  
17 Midwest region, a south region?

18 A. Generally, there is -- it is, it is along those  
19 territorial lines.

20 Q. So in order for me to get that information, I  
21 need to depose Mr. Dallas or Mr. Stamoutsus, correct?

22 A. No. I could provide that information.

23 Q. I would like you to provide it to me under oath  
24 in the deposition. Otherwise, I am going to go to the  
25 salespeople.

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1 A. I would not be able to give you a complete, full  
2 answer at this time.

3 Q. Okay. And you would agree that the vice  
4 president of sales would have more knowledge about that,  
5 correct?

6 A. It depends on which question you're asking.

7 Q. Well, first of all, is there a region within WHG  
8 or WHR that encompasses the State of Illinois?

9 A. There is a sales region that encompasses the  
10 State of Illinois, yes.

11 Q. And what is that called?

12 A. I do not recall the name of that region.

13 Q. And in terms of the corporate heir -- below -- I  
14 assume that Mr. Dallas reports to Mr. Stamoutsus,  
15 correct?

16 A. No, not at all.

17 Q. So they're on equal levels?

18 A. Yes.

19 Q. All right. So Mr. Dallas is also a senior vice  
20 president, correct?

21 A. Correct.

22 Q. Who reports to -- going down the corporate chain,  
23 who reports to Mr. Stamoutsus and Mr. Dallas?

24 A. I would not recall all of the names, off the top  
25 of my head, right now.

Page 71

1 Q. Would they be titled regional manager, or what  
2 designation does Wyndham use?

3 A. For -- there are regional vice-presidents and  
4 then there are sales, salesmen.

5 Q. Okay. But salespeople, salesmen, would be in --  
6 the corporate chain would be below regional  
7 vice-presidents, correct?

8 A. Yes.

9 Q. If there is a regional vice president, are  
10 there -- is there a hierarchy of management in between  
11 regional vice president and salespeople? For example,  
12 sales manager or district manager or regional manager?

13 A. There is not that breadth, so I wouldn't quite  
14 say that was -- I wouldn't say that would be accurate.

15 Q. Okay. Is there a vice president for sales in the  
16 country of Mexico, for the country, that, at least,  
17 includes the country of Mexico?

18 A. There is.

19 Q. Who would that be?

20 A. That is Doug Smith.

21 Q. Doug Smith?

22 A. Doug Smith. Although, I'm not sure about the  
23 vice. But for the purposes of your question, it would  
24 be Doug Smith.

25 Q. Is Mr. Smith's office in your Parsippany, New

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1 Jersey, office?

2 A. Yes.

3 Q. Is Mr. Stamoutsus' office in your New Jersey  
4 office?

5 A. Yes.

6 Q. Mr. Dallas?

7 A. Yes.

8 Q. Okay. For purposes of understanding the Wyndham  
9 brand, in other words, what various items franchisees  
10 use at hotels that are franchised by Wyndham, all of  
11 those employees would be headquartered here in the  
12 United States, correct?

13 A. Could you repeat that question, please?

14 MR. NEMEROFF: If you can reread that, I  
15 would appreciate it.

16 (Whereupon, the Court Reporter read back the  
17 record as requested.)

18 Q. Talking about Wyndham employees.

19 A. I'm sorry. I'm not understanding the connection  
20 between brand items and employees. I don't understand  
21 the question.

22 Q. Well, for example, if I wanted to understand the  
23 type of signage Wyndham offers to its franchisees at its  
24 Resorts --

25 A. Okay.

18 (Pages 69 to 72)



Page 73

1 Q. -- the employee from Wyndham that would have the  
2 best understanding of that would be headquartered in the  
3 United States, correct?

4 A. The employee from Wyndham who understands the  
5 brand standards with respect to signage is in  
6 Parsippany, correct, or employees, correct.

7 Q. That goes for all of the various systems that  
8 Wyndham has. They're all employees that are  
9 headquartered in the United States, correct?

10 A. Would you repeat the question, please?

11 Q. Sure. With regard to any employee of Wyndham  
12 that we want to talk with about the policies, the  
13 standards, the specifications, the procedures that go  
14 along with the franchise agreement that was entered into  
15 between Wyndham and Islander Properties, all of those  
16 employees would be headquartered in the United States,  
17 correct?

18 A. Again, as I am the best person to answer that  
19 question, I am headquartered in the United States.

20 Q. I'm not talking about the best person. You are  
21 not the only person that has knowledge of the Wyndham  
22 brand?

23 A. Oh. Correct. Absolutely.

24 Q. There is lot of people that have knowledge of the  
25 Wyndham brand?

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1 A. There are more than a few that have knowledge of  
2 the brand standards.

3 Q. In fact, there is lot of people who -- let me ask  
4 you a question. In terms of interaction, say, there is  
5 a dispute between a franchisee and a franchisor over  
6 standard specifications, policies and procedure, and the  
7 franchisee wanted to contact somebody at Wyndham to get  
8 a resolution to that issue, would they be discussing  
9 that with you or is there somebody else at Wyndham they  
10 would be discussing that with?

11 A. If there were disagreement regarding brand  
12 standards, most likely they would be talking to a QA  
13 person in Parsippany.

14 Q. Okay. And QA, meaning quality assurance,  
15 correct?

16 A. Correct.

17 Q. And is there a quality assurance department?

18 A. For, for Wyndham Hotels and Resorts there are  
19 individuals responsible for QA.

20 Q. Okay. Who is the highest ranking person that  
21 would be responsible for QA?

22 A. I would say, that would be Jeff Smith.

23 Q. Jeff Smith. Okay. And is he related to Doug  
24 Smith?

25 A. Not to my knowledge.

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1 Q. Is Jeff Smith in Parsippany?

2 A. Yes, he is.

3 Q. Do you know who works below Jeff Smith? Not  
4 everyone down the line. I'm just talking about the next  
5 person below in the corporate chain. You know, let me  
6 strike that. Is there a specific, is Jeff Smith the  
7 vice president?

8 A. Yes, he is.

9 Q. Is there a specific QA person who handles  
10 properties in Mexico, among other ones that they may  
11 handle? That is one of the areas they would deal with.  
12 QA?

13 A. A QA issue in Mexico, to my knowledge, would  
14 probably be addressed by Doug Smith in coordination with  
15 Jeff Smith.

16 Q. Okay. Great. Thank you. All right. Let's go  
17 back to the agreement, itself, Page 11.

18 A. Yes. I'm there.

19 Q. Okay. Under Section D-4, which is entitled,  
20 "Food and Beverage Standards," on Number 4 requires the  
21 franchisee to use only menus, signs, promotional  
22 displays and other materials that comply with the style,  
23 pattern and design prescribed in the manual or,  
24 otherwise, approved in writing by the franchisor.  
25 That's what that says, correct, ma'am?

Page 76

1 A. It does.

2 Q. Okay. Under Number Letter E, "Guests Services,"  
3 it says, "The Franchisee shall honor at the Hotel all  
4 credit cards specified in the Manual," correct?

5 A. Yes.

6 Q. When they say, "the Manual," which manual are  
7 they referencing?

8 A. The Brand Standards Manual.

9 Q. And that is Exhibit Number 3, correct?

10 A. Yes.

11 Q. All right. And then the franchisee also agreed  
12 to participate in and provide all information requested  
13 by the franchisor for the purpose of all customer  
14 surveys and guest satisfaction audits conducted by the  
15 franchisor, correct?

16 A. It does say, correct.

17 Q. And the franchisee shall offer all guest services  
18 including complimentary services that franchisor may  
19 prescribe for Wyndham Hotels, including, without  
20 limitation, programs and services for senior citizens,  
21 children and frequent guests; is that correct?

22 A. It does say that, correct.

23 Q. And in addition to that, franchisee shall offer  
24 all products and services and shall participate in all  
25 programs that the franchisor may determine to be in the

19 (Pages 73 to 76)

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1 best interest of or may reasonably establish for the  
 2 System, including, without limitation, guest access high  
 3 speed internet service, guest recognition programs such  
 4 as Wyndham ByRequest, in room pay per view movies,  
 5 subject to franchise rights to direct the type of adult  
 6 movies which are offered, and the time and manner which  
 7 such movies are offered, travel agents programs,  
 8 marketing incentive programs, complaint resolution  
 9 programs and programs for the provision of complimentary  
 10 rooms or refunds to guests to the extent such programs  
 11 are capable of being implemented at the approved  
 12 location.

13 That's what the agreement says, correct?

14 A. You read correctly.

15 Q. And you don't disagree that that is in the  
 16 contract, correct?

17 A. I do not disagree that the language is contained  
 18 in the contract.

19 MR. DELY: Just want to read the whole --

20 MR. NEMEROFF: I have select portions. I  
 21 think I would like to create a record.

22 Q. Item under Number 4 under "Quality Assurance  
 23 Program Inspections," it states that --

24 MR. MERRIWEATHER: Excuse me. Where are you  
 25 looking?

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1 Q. Quality Assurance?

2 A. You said Number 4, and I don't see Number 4 on  
 3 Page 12.

4 MR. DELY: Apologize. F.

5 Q. On Page 12, Item 4, where it says, "Quality  
 6 Assurance Program Inspections," do you see where I'm  
 7 referring to, ma'am?

8 A. I do.

9 Q. Okay. It states, "Franchisor shall administer a  
 10 quality assurance program for the System which may  
 11 include conducting periodic inspections from the hotel  
 12 and guest satisfaction audits and surveys to assure  
 13 compliance with System standards." That's correct,  
 14 right?

15 A. You read correctly.

16 Q. It also says, "Franchisee hereby grants the  
 17 franchisor and its representatives the right to enter  
 18 upon the premises of the hotel at all reasonable times,  
 19 with or without prior notice, for the purpose of  
 20 conducting inspections," correct?

21 A. It does say that, correct.

22 Q. So at any time Wyndham can inspect the Cozumel  
 23 property that is the subject of this lawsuit, correct?

24 A. Not necessarily. Because if you remember, as an  
 25 independent contractor, the franchisee can refuse a

Page 79

1 Wyndham employee from entering onto the premises.

2 Q. Where does that say that in this contract?

3 A. Where -- because an independent contractor -- in  
 4 Section 21, the franchisee acknowledges that franchisor  
 5 and franchisee will not be considered as joint ventures,  
 6 partners or agents of each other. Franchisee  
 7 specifically acknowledges that the relationship created  
 8 by the agreement is not fiduciary, special or any other  
 9 similar relationship. But, rather, is an arms length  
 10 business relationship.

11 Q. Ma'am, my question is very simple. Tell me,  
 12 specifically, in this contract where it says that the  
 13 franchisee can refuse to allow the franchisor to enter  
 14 the premises, specifically, those words?

15 A. As I was answering, it also says: Franchisor  
 16 owes franchisee no duties except as expressly provided  
 17 in this agreement.

18 Q. You didn't answer my question, ma'am. Tell me in  
 19 the agreement where the words that the -- it  
 20 specifically in these words says, "franchisee may refuse  
 21 the right to enter upon the premises of the hotel to the  
 22 franchisor." Show me the specific words where it says  
 23 that, ma'am.

24 A. I don't know why it would be there, if, as  
 25 independent contractor, the franchisee owns, operates

Page 80

1 and controls their own facility. That language wouldn't  
 2 need to be there to be correct.

3 Q. Ma'am, I'm not asking you to interpret anything.  
 4 I'm asking you to find the specific words that say that.  
 5 There are none in that contract; you would agree with  
 6 me, correct?

7 A. I agree, those specific words are not in the  
 8 contract.

9 Q. In fact, not only does the contract say that the  
 10 franchisor has a right to inspect, the franchisee must  
 11 also pay for each inspection pursuant to the terms of  
 12 the contract; is that correct?

13 A. The contract does require payment for the  
 14 inspection.

15 Q. And the contract also requires the franchisee to  
 16 provide lodging without charge to the franchisor's  
 17 representative during the time necessary to complete the  
 18 inspection, correct?

19 A. It -- the language has provide lodging, if  
 20 available.

21 Q. Okay. Where does it say, "if available"? It  
 22 says -- I don't see where it says, "if available,"  
 23 ma'am?

24 A. In Section F, in the middle of the paragraph,  
 25 "franchisee shall pay a fee for each inspection, if any

20 (Pages 77 to 80)

Page 81

1 assessed, provide lodging, if available."  
 2 Q. The next sentence of that paragraph says that the  
 3 franchisee must cooperate fully -- I take that back.  
 4 I'm throwing those first two words in. This contract,  
 5 Section F, requires the franchisee to cooperate fully  
 6 with franchisor's representatives during the inspection.  
 7 Isn't that correct?

8 A. It does state, "cooperate fully with franchisor's  
 9 representatives during inspections".

10 Q. Okay.

11 A. During the inspections.

12 Q. And it also says, "and take all steps reasonably  
 13 necessary to correct any deficiencies detected within  
 14 the time specified by franchisor," correct?

15 A. It does read that way, yes.

16 Q. Do you know if there is video teleconferencing  
 17 equipment on the premises of the Cozumel resort?

18 A. I do not know.

19 Q. Going to Page 13 of the agreement, Item Number 4  
 20 on Page 13 states, "The size, form, color scheme,  
 21 content and location of all signs, advertisements and  
 22 graphic materials displayed in any public area or guest  
 23 room at the hotel shall be as prescribed in the manual  
 24 or otherwise approved in writing by franchisor,"  
 25 correct?

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1 A. It does read that, correct.

2 Q. There is also a Wyndham graphic manual, correct,  
 3 Page 16, Section 9?

4 A. Did you say Page 16, Section 9? I'm sorry.

5 MR. MERRIWEATHER: He is looking at 9-A.  
 6 Third line down it references a Wyndham graphic manual.

7 A. The section does reference the Wyndham Graphic  
 8 Manual.

9 Q. Have you ever seen the Wyndham Graphic Manual?

10 A. Do not believe so.

11 Q. Do you know who at Wyndham would have the most  
 12 knowledge about the contents of the Wyndham Graphic  
 13 Manual?

14 A. That would be QA, but I'm not certain which  
 15 individual in QA.

16 Q. Okay. Does Wyndham hold national regional  
 17 conventions for its franchisees?

18 A. There is a regular meeting.

19 Q. Is that an annual meeting?

20 A. I believe so.

21 Q. What is the purpose of that annual meeting?

22 A. I don't believe I would be the best person to  
 23 answer that question.

24 Q. Did you ever attend one of those meetings?

25 A. No, I have not.

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1 Q. Who would be the best person to answer that  
 2 question?

3 A. Jeff Smith.

4 Q. Are you familiar with how -- well, first of all,  
 5 do you know whether or not Wyndham works with travel  
 6 agents to market its franchise properties?

7 A. I wouldn't say, "works with," but there is --  
 8 there is a program by which the Wyndham brand is  
 9 marketed to travel agents.

10 Q. Okay. Are you involved in that program?

11 A. No.

12 Q. What is that program called?

13 A. I don't believe there is a specific name.

14 Q. Okay.

15 A. Well, let me rephrase that. There are names of  
 16 different types of programs, different type of marketing  
 17 programs, but you need to be more specific for me to  
 18 answer.

19 Q. Is that what some of the salespeople do? They,  
 20 as part of their responsibility, go to travel agents and  
 21 market Wyndham franchised properties to the travel  
 22 agents?

23 MR. DELY: I'll object to foundation, that  
 24 she doesn't have salespeople reporting to her.

25 Q. You are an officer of the corporation. I assume,

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1 you have some understanding.

2 A. There is a team that is responsible for working  
 3 with travel agents and other entities to promote the  
 4 Wyndham brands to travelers.

5 Q. And who is the head of that team?

6 A. Generally, that's Greg Land.

7 Q. Greg. What is the last name?

8 A. Land, L-a-n-d.

9 Q. And is he in Parsippany?

10 A. Yes, he is.

11 Q. Is he considered -- what is he vice president of?

12 A. He is senior vice president. I am not recalling  
 13 his title correctly right now.

14 Q. Okay. And does he have -- do you know who his  
 15 direct subordinates are? I'm not talking about multiple  
 16 layers below. I'm talking about directly below.

17 A. Yes. Well, there is a woman who works, generally  
 18 speaking, on the next level below him. I'm not  
 19 recalling her name right now.

20 Q. Is she a vice president?

21 A. I believe she is a vice president, yes.

22 Q. Okay. Are you familiar with the travel agents  
 23 called Apple Vacations?

24 A. Not recalling that name.

25 Q. Well, you probably wouldn't know the answer, but

21 (Pages 81 to 84)

Page 85

1 I'm going to ask it anyway. Do you know who -- first of  
2 all, do you know if somebody from Wyndham promotes the  
3 Wyndham brand to anybody from Apple Vacations?

4 MR. DELY: I'll object to foundation.

5 A. I am not recalling Apple Vacations.

6 Q. Okay. Probably better off asking Mr. Land,  
7 correct?

8 MR. DELY: I'll object. She doesn't know  
9 Apple Vacations.

10 Q. Assuming Apple Vacations is a travel agent that  
11 operates here in the United States, Mr. Land would  
12 probably be the best person to ask whether Wyndham  
13 markets to them or not?

14 A. Again, I couldn't say. I'm not familiar with  
15 that name enough to be able to be comfortable answering  
16 that question.

17 Q. Have you ever seen the Wyndham Hotel directory?

18 A. Yes.

19 Q. What is that?

20 A. It is a directory that lists Wyndham Hotels,  
21 Wyndham franchised hotels and Wyndham managed hotels.

22 Q. And going to Page 17, Section E, whenever you're  
23 ready?

24 A. I'm there.

25 Q. As part of the franchise agreement, Franchisee

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1 agrees to list Wyndham franchised hotel in the Wyndham  
2 Hotel directory and to furnish the franchisor such  
3 information as franchisor may request for that purpose;  
4 is that correct?

5 A. That's what it says.

6 Q. Franchisee agrees to honor the information that  
7 franchisee causes to be published in the directory to  
8 comply with such other requirements with respect to the  
9 directory as may be specified from time to time in the  
10 manual, correct?

11 A. You read that correctly.

12 Q. Next paragraph on Page 17 is F, as in Frank,  
13 "Additional marketing programs." Are you with me?

14 A. Yes.

15 Q. The Franchisor may establish and coordinate  
16 advertising, marketing and sales programs, customer  
17 satisfaction programs and other activities, among System  
18 hotels and other lodging products of Franchisor and its  
19 Affiliates on a System-wide or local or regional basis  
20 and provide for participation therein by Franchisee.  
21 That's in the agreement, correct?

22 A. Yes, it is.

23 Q. And Franchisee shall participate in such programs  
24 and activities on the same basis as other affiliated  
25 System hotels, including hotels owned or managed by

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1 franchisor or its affiliates in the same division or  
2 region as the hotel, and such programs and activities  
3 will be paid for outside the central marketing fund.  
4 Correct?

5 A. Just one small correction. It says, "as other  
6 participating system hotels". Not affiliated system  
7 hotels. But other than that, you read correctly.

8 Q. Okay. Okay. Let's go to Page 20.

9 MR. MERRIWEATHER: David, just one question.  
10 Does it make sense to break it up into another session?  
11 I don't know how much longer you have. If it is going  
12 to be four more hours, if that's what you're asking --

13 MR. NEMEROFF: We seem to be moving along at  
14 a much quicker pace now, so I don't think it is going to  
15 be that -- it is going to be probably at least a half  
16 hour to hour longer. I can't guaranty it. I don't  
17 expect it.

18 MR. MERRIWEATHER: An hour later is already  
19 longer. It is getting late here on the east coast. I  
20 didn't schedule this. I didn't see this was going to go  
21 so late past the business hours here. So if you are  
22 going to be that long, then I would suggest we reconvene  
23 for another telephone deposition. We'll, obviously,  
24 agree to produce Valerie again.

25 MR. NEMEROFF: Ask Counsel. I prefer to

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1 finish today. We have certain -- the Court is sort of  
2 pushing us to get this thing done. I'll leave it up to  
3 the Counsel here.

4 MR. DELY: It might be better to push on.  
5 Obviously, if there are reasons that you cannot, other  
6 obligations for Valerie whatnot, certainly, we can  
7 reconvene. It is important purposes for the Court and  
8 just getting it done. If we've got a half an hour to an  
9 hour, it might be prudent to just get it done. But,  
10 obviously, I don't want to step on anyone's toes, as far  
11 as obligations or commitments that they have. I didn't  
12 anticipate going this long and certainly feel that it  
13 could be moved along, so ...

14 MR. NEMEROFF: I only have one, two, three  
15 -- four more pages in the agreement. And some pages  
16 marked in the manual. It is up to you guys.

17 (Discussion off the record.)

18 BY MR. NEMEROFF:

19 Q. Ma'am, on Page 20 of the agreement --

20 A. Yes.

21 Q. -- Subsection-C?

22 A. Yes.

23 Q. Where it says, "Use of Proprietary Marks"?

24 A. Yes.

25 Q. Under Subsection 1 of C, it states: "Unless

22 (Pages 85 to 88)

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1 otherwise authorized or required by Franchisor,  
 2 Franchisee shall operate and advertise the hotel only  
 3 under the name set forth in the Attachment-A without  
 4 prefix or suffix," correct?  
 5 A. Correct.  
 6 Q. And going to Attachment-A, that name is Wyndham  
 7 Resort, An All-Inclusive Hotel, correct?  
 8 MR. MERRIWEATHER: It is essentially Page  
 9 50.  
 10 THE WITNESS: Oh.  
 11 A. Correct.  
 12 Q. So you would agree with me that in terms of  
 13 marketing its hotel to the public, Islander Properties  
 14 is required to market it as Wyndham Resort, An  
 15 All-Inclusive Hotel?  
 16 A. No. I would not agree with the way you phrased  
 17 that.  
 18 Q. Well, otherwise, it will be in breach of the  
 19 franchise agreement, correct?  
 20 A. Well, again, the agreement needs to be read in  
 21 its entirety, and there are waivers possible, so I --  
 22 Q. Right. But you're not aware of any waivers that  
 23 allowed Islander Properties to market or advertise its  
 24 property under any name other than Wyndham Resort, An  
 25 All-Inclusive Hotel, correct?

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1 A. I am not aware of any waiver requests.  
 2 Q. Okay. Under Page 22, Section 11 --  
 3 A. Yes.  
 4 Q. And that's entitled under Subsection-A, "The  
 5 Manual"?  
 6 A. Correct. Yes, I see that.  
 7 Q. Is the Brand Standards Manual that we marked as  
 8 Exhibit Number 3 the entire thing that comprises the  
 9 manual, or is it just part of the manual?  
 10 A. I, I'm not aware of any other Brand Standards  
 11 Manual, other than the one here.  
 12 Q. I'm saying, is the Brand Standards Manual the  
 13 entire -- what's entitled, "The Manual," or is it just  
 14 part of the manual? Do you understand what I'm saying?  
 15 A. I believe so. One minute, please.  
 16 (Pause.)  
 17 MR. MERRIWEATHER: Counsel, to move this  
 18 along, can I suggest that the witness look at the  
 19 definitions to the agreement? I mean --  
 20 MR. DELY: That's fine.  
 21 MR. NEMEROFF: That's fine. I don't know  
 22 what is happening there.  
 23 MR. MERRIWEATHER: Here. If you look at  
 24 Attachment-D, it contains the definitions.  
 25 THE WITNESS: Yes. If I could read that

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1 manual, the Wyndham Business Deluxe Resort Hotel  
 2 Operating Manual. Let me just read it, the Wyndham  
 3 Business --  
 4 MR. NEMEROFF: Are you reading from --  
 5 THE WITNESS: Attachment-D, Page 2.  
 6 MR. NEMEROFF: I'm sorry. Okay. Go ahead.  
 7 A. The manual is the Wyndham Business Deluxe/Resort  
 8 Hotel Operating Manual. The Wyndham Graphics Manual and  
 9 all other written statements, directives and any other  
 10 manuals and materials issued by Franchisor and any  
 11 modifications to such materials containing the  
 12 standards, specifications, policies and procedures for  
 13 the establishment and operation of System hotels.  
 14 Q. Okay. Well, let's -- so, then, this Brand  
 15 Standards Manual does not comprise the entire manual,  
 16 correct?  
 17 A. No.  
 18 Q. Is the Wyndham Business Deluxe/Resort Hotel  
 19 Operating Manual the same as the Brand Standards Manual?  
 20 A. To my understanding, yes.  
 21 Q. Okay. And we already talked about the Wyndham  
 22 Graphic Manual, correct?  
 23 A. Yes.  
 24 Q. All right. Let's go back to Page 22, if we can.  
 25 Thank you.

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1 You would agree that the manual for your  
 2 definition contained, among other matters, minimum  
 3 standards and requirements for constructing, equipping,  
 4 furnishing, staffing and supplying the Hotel and  
 5 management training and operational standards,  
 6 techniques.  
 7 I read correctly?  
 8 A. Correct. You read correctly.  
 9 Q. Under Subsection-B, "Compliance with the Manual,"  
 10 you would agree that to protect the reputation and good  
 11 will of Franchisor and to maintain high standards of  
 12 operation under the Proprietary Marks, Franchisee shall  
 13 conduct its business under and subject to the Manual,  
 14 other written directives which Franchisor may issue from  
 15 time to time, whether or not such directives are  
 16 included in the Manual, and any other manuals and  
 17 materials created or approved for use in the operation  
 18 of the hotel. The manual shall supplement this  
 19 Agreement.  
 20 That is an accurate reading of Subsection-B?  
 21 A. You did read correctly. I think it is important  
 22 to note that it is our expectation that the licensee  
 23 would comply with the manual as it is described, but we  
 24 cannot force them to do so.  
 25 Q. Really. Do you know what the word, "shall,"

23 (Pages 89 to 92)



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1 means, ma'am?  
 2 A. I, generally, believes it means will. But the  
 3 agreement has to be read in its entirety. And this is  
 4 an independent contractor agreement.  
 5 Q. I understand that. Has Wyndham ever filed a  
 6 lawsuit because one of its franchisees did not follow  
 7 the Brand Standards Manual?  
 8 A. At this time I don't recall specifics of any  
 9 other matters.  
 10 Q. Who is the General Counsel for Wyndham in  
 11 Parsippany, New Jersey?  
 12 A. Sarah Wynn.  
 13 Q. Sarah, what?  
 14 A. Wynn.  
 15 Q. Wynn?  
 16 A. W-y-n-n.  
 17 Q. Okay. She is in Parsippany, correct?  
 18 A. Yes, she is.  
 19 Q. Is Ms. Wynn involved in litigation involving  
 20 Wyndham and its enforcement of its brand along with  
 21 possibly outside counsel?  
 22 A. She would be if there -- if that was a subject of  
 23 a matter to which we were involved, she would be  
 24 involved.  
 25 Q. All right. How long has Ms. Wynn been the

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1 General Counsel for --  
 2 MR. MERRIWEATHER: If you know.  
 3 A. About two years.  
 4 Q. And you would agree that there would not be a  
 5 lawsuit in which Wyndham was aware of in which they were  
 6 being sued that Ms. Wynn would not ultimately know  
 7 about, correct?  
 8 A. I would not want to speak for what Sarah would be  
 9 aware of.  
 10 Q. In every case that you've been involved in  
 11 involving litigation with Wyndham, at least, since Ms.  
 12 Wynn has been General Counsel, she's been involved to  
 13 some degree, correct?  
 14 A. I, on a day-to-day basis, do not know, because I  
 15 rarely, if ever, have spoken with Ms. Wynn regarding  
 16 cases.  
 17 Q. How many other lawyers are in the legal  
 18 department at Wyndham?  
 19 MR. DELY: Object to this line of  
 20 questioning as to relevance.  
 21 A. Generally, about four or so, I believe.  
 22 Q. Okay. Which lawyers have you worked with  
 23 directly in the in-house Wyndham legal department, on  
 24 legal cases involving Wyndham?  
 25 A. Because I don't specifically recall which cases

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1 I've been involved in regarding which brands, I couldn't  
 2 answer that correctly right now.  
 3 Q. Name any lawyer, any time.  
 4 MR. MERRIWEATHER: If you expand it to  
 5 Wyndham Hotel Group, I think she can answer the  
 6 question.  
 7 MR. NEMEROFF: Excuse me?  
 8 MR. MERRIWEATHER: If you expand your  
 9 question to Wyndham Hotel Group, I think she can answer  
 10 the question pretty easily.  
 11 Q. I assume, there is General Counsel for all of the  
 12 Wyndham entities, correct, in Parsippany?  
 13 A. Yes. Sarah Wynn is the General Counsel for all  
 14 Wyndham entities.  
 15 Q. With regard to any Wyndham entity that you have  
 16 been personally involved in with litigation; in other  
 17 words, you've been asked to give an affidavit or  
 18 deposition or testify in that case, name any General  
 19 Counsel or Assistant General Counsel that you have done  
 20 any work for or with, I should say?  
 21 A. There is only one General Counsel for Wyndham  
 22 Hotel Group.  
 23 Q. Okay.  
 24 A. And I do not recall working with Sarah on any  
 25 litigation. I don't recall.

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1 Q. That wasn't my question. My question was, any of  
 2 the Wyndham groups. Give me the name of any General  
 3 Counsel that you've had any involvement with. If you  
 4 can't give me an exhaustive list, I understand that.  
 5 But I want to know the name of any General Counsel  
 6 you've done work with.  
 7 A. There is only one General Counsel for Wyndham  
 8 Hotel Group.  
 9 Q. Or lawyers that work in the legal department,  
 10 ma'am.  
 11 A. For Wyndham Hotel Group?  
 12 Q. No. Any entity, ma'am. Listen to my question.  
 13 MR. MERRIWEATHER: She was just about to  
 14 answer it. She was saying for Wyndham Hotel Group the  
 15 attorneys are. She was about to answer that before you  
 16 interrupted her.  
 17 A. For Wyndham Hotel Group the attorneys that I  
 18 would have worked with would be Mark Merriweather.  
 19 Q. Merriweather?  
 20 A. Yes.  
 21 Q. M-e-e-r?  
 22 MR. MERRIWEATHER: No. It's two Rs.  
 23 Q. Okay. Is that Mr. Merriweather that is here  
 24 today?  
 25 MR. MERRIWEATHER: Yes. That's me.

24 (Pages 93 to 96)

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1 MR. NEMEROFF: That's what I thought. I  
2 didn't get your last name.  
3 Q. Go ahead, ma'am.  
4 A. Also, with -- oh, my goodness.  
5 MR. MERRIWEATHER: He's asking on  
6 litigation, who have you worked with?  
7 A. My colleague who is on maternity leave. I can't  
8 recall her name right now. It just flew out of my head.  
9 Oh, goodness. I'll go back to that. Generally, Mark  
10 Merriweather and a -- a woman in the legal team whose  
11 name just went right out of my head. I apologize.  
12 Q. Say Wyndham Hotel Group, what entities are you  
13 referring to?  
14 A. Would have been Wyndham Hotels and Resorts.  
15 Could have been Ramada. Could have been Days. Could  
16 have been Knights Inn or any of our other brands.  
17 Q. Are you including Wyndham Hotel Group  
18 International? Is that what you're referring -- that's  
19 what you're referring to, and Wyndham Hotel Group?  
20 A. In my way of thinking, yes.  
21 Q. Just want to make sure we're on the same page.  
22 Ma'am, you're not a lawyer, correct?  
23 A. I am.  
24 Q. Oh. You're a lawyer?  
25 A. Yes. I am a licensed attorney, but I am not

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1 Counsel for Wyndham Hotel Group or any of its entities.  
2 Q. Where are you licensed to practice law?  
3 A. In the State of New York.  
4 Q. When did you get your license?  
5 A. 1991.  
6 Q. Okay. Where did you go to law school?  
7 A. St. John's University, School of Law.  
8 Q. Have you ever practiced law?  
9 A. For a grand total of six months post law school.  
10 Q. Okay. What type of law did you practice in that  
11 six-month period?  
12 A. I was bond counsel.  
13 Q. What?  
14 A. Bond, B-o-n-d, counsel.  
15 Q. What does that mean?  
16 A. Attorney who represents entities that would be  
17 issuing bonds. We were a firm that had those types of  
18 clients.  
19 Q. And other than that, you've never practiced law,  
20 correct?  
21 A. I mean, I am currently admitted, so I wouldn't  
22 want to say I've never practiced law. But I only  
23 practiced law for a firm for six months. And I do not  
24 practice law as an employee of Wyndham.  
25 Q. Tell me when, other than the six months doing

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1 bond law, that you practiced law.  
2 A. Technically, any time I may have given any legal  
3 advice would have been practicing law. But I have not  
4 done so in a formal capacity, not as a solo  
5 practitioner, and didn't have my own single, et cetera.  
6 Q. When you are saying giving legal advice as  
7 relates to your job with Wyndham?  
8 A. No, never.  
9 Q. You are not licensed to practice in the State of  
10 New Jersey?  
11 A. I am not. That's correct.  
12 Q. That would be unethical to give advice, other  
13 than in the State of New York, I think; am I right?  
14 MR. MERRIWEATHER: I think we're going far  
15 afield here.  
16 MR. DELY: Objection to all of that.  
17 Q. Ma'am, are you aware of -- you read the complaint  
18 in this case, correct?  
19 A. I believe so.  
20 Q. Okay. Are you aware of the names of any  
21 witnesses to this accident that ultimately resulted in  
22 my client's death?  
23 A. Not that I am recalling right now.  
24 Q. Have you or anybody from Wyndham and any of its  
25 entities taken any statements, oral or in writing, of

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1 any witnesses to my client's accident that occurred on  
2 October 16th, 2007?  
3 A. No.  
4 Q. Are you aware of any employees of Islander  
5 Properties that were witnesses to my client's accident?  
6 A. Not that I recall.  
7 Q. When you say not that you recall, I mean, I  
8 assume, you don't have -- have you ever known of any  
9 employees or not, ma'am -- not what you recall at this  
10 point -- but have you ever been aware of any witnesses  
11 to this accident?  
12 A. Not that I recall.  
13 Q. When you say not that you recall, what do you  
14 mean by that?  
15 A. I'm not recalling if I had heard a name of  
16 someone who might have seen something at the hotel.  
17 Q. Have you looked at the file in this case that is  
18 maintained by the legal department?  
19 A. If there is a file, I have not looked at a file.  
20 Q. Have you looked at any witness statements that  
21 Wyndham or anybody affiliated with Wyndham or hired by  
22 Wyndham have ever taken regarding this accident?  
23 A. There are none, to my knowledge.  
24 Q. Okay. So in terms of this case, because you're  
25 not aware of any witnesses, there would be no need to

25 (Pages 97 to 100)



1 take any depositions of any Islander employees in Mexico  
2 about this accident, correct? At least, as we sit here  
3 today.

4 MR. DELY: Objection. Foundation, form.

5 Q. You can answer.

6 A. I don't see how I could answer that question.

7 Q. My question is, as we sit here today, based on  
8 your current knowledge, you can't say under oath that we  
9 would be required to take a deposition of any  
10 eye-witnesses to this accident who are employees of  
11 Islander Properties, correct?

12 MR. DELY: I'll just renew my objection.

13 The term required --

14 MR. NEMEROFF: Let me rephrase my question,  
15 ma'am.

16 Q. You can't identify, as we sit here today, the  
17 name of any witness who is a Mexican resident to this  
18 accident --

19 A. Correct.

20 Q. -- can you?

21 A. Correct.

22 Q. Have you spoken to the owners of Islander  
23 properties regarding this incident?

24 A. No.

25 Q. Do you know if anybody affiliated with Wyndham,

1 A. Not that I recall.

2 Q. Do you know who the --

3 A. I know, Islander Properties.

4 Q. It's been identified that Islander, S, period, A,  
5 period De, C, period, V, period, is the owner of the  
6 resort where this accident occurred. My question is, my  
7 understanding is that is some type of a Mexican  
8 corporation. Question to you is: Do you know who are  
9 the shareholders of that corporation, by name?

10 A. I do not.

11 Q. And you've never spoken to any of those  
12 shareholders, correct?

13 A. Not that I would have known.

14 Q. Were you involved in the negotiation of the  
15 franchise agreement between Wyndham and Islander  
16 properties?

17 A. No.

18 Q. Wyndham is a corporation organized under the laws  
19 of the State of Delaware, correct?

20 A. Wyndham Hotels and Resorts, that is correct.

21 Q. And, also, Wyndham Hotel Group International,  
22 Inc., correct?

23 A. I believe so.

24 Q. And despite being a corporation organized under  
25 the laws of the State of Delaware, it maintains its

1 with any regard, employees, officers, directors or  
2 private investigators hired by Wyndham, do you know of  
3 anybody that has spoken to any of the owners of Islander  
4 Properties regarding this incident?

5 MR. DELY: I just want to object to the  
6 form. And she had previously testified that she wasn't  
7 aware of any.

8 Q. You can answer, ma'am.

9 A. I'm sorry. Can you repeat the question?

10 Q. Can you reread the question, please?

11 (Whereupon, the Court Reporter read back the  
12 record as requested.)

13 A. I, I believe there were two separate questions.  
14 I don't know of any investigation. I don't believe  
15 there was any investigation by any Wyndham person or  
16 anyone employed by Wyndham as to this incident.

17 Q. Are you aware whether or not Wyndham or the  
18 lawyers hired by Wyndham have hired a private  
19 investigator to seek out witnesses for this accident  
20 that occurred in Cozumel, Mexico, on October 16th, 2007?

21 MR. DELY: Objection, foundation.

22 A. I do not know.

23 Q. Have you ever spoken to the owners, any of the  
24 owners of Islander Properties, at all, about any issue?  
25 Not this incident. About anything.

1 principle place of business in the State of New Jersey,  
2 correct?

3 A. For, for both entities the principle place of  
4 business is New Jersey.

5 Q. Wyndham Hotel International Group, Inc., does  
6 business here in Cook County, Illinois, correct?

7 A. I'm not sure.

8 Q. Who would be able to provide me with that  
9 information about whether or not Wyndham Hotel Group  
10 International, Inc., does business in Cook County,  
11 Illinois?

12 A. I would.

13 Q. There's got to be somebody else at the company.  
14 If you don't know, somebody else has got to know. Who  
15 would that person be?

16 A. I would.

17 Q. Well, how come you don't know right now, ma'am?  
18 You're a high level executive at this company. How come  
19 you don't know?

20 A. I am not recalling whether or not we have an  
21 employee in Illinois, in the Cook County at this time.

22 Q. Okay. You do have franchises here in Cook County  
23 now, correct?

24 MR. DELY: I want to clarify, which entity  
25 are you talking about?

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1 Q. Wyndham Hotel Group International, Inc., has  
2 franchises here in Cook County, Illinois; is that  
3 correct?  
4 A. I do not believe so.  
5 Q. What about Wyndham Hotels and Resorts, LLC?  
6 A. I am not certain at this time.  
7 Q. Okay. Okay. Wyndham, the name Wyndham, has  
8 various entities registered here to do business in the  
9 State of Illinois currently; isn't that correct?  
10 A. Could you repeat that, please?  
11 Q. Yes. There are a number of different Wyndham  
12 corporate entities that are out there, correct?  
13 A. There are more than one corporate entities with  
14 the Wyndham name.  
15 Q. Right. If you go on to the Illinois Secretary of  
16 State website, Wyndham Hotels and Resorts, LLC, is  
17 registered to do business here in the State of Illinois;  
18 is that correct?  
19 MR. DELY: Objection. She may not have  
20 acknowledged the State of Illinois website.  
21 Q. Wyndham Hotel Resort LLC is registered to do  
22 business here in the State of Illinois with the Illinois  
23 Secretary of State; is that correct?  
24 A. I wouldn't be comfortable answering that question  
25 right now.

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1 Q. What do you mean, "right now"? Do you want us to  
2 come back in a week to answer some of my questions?  
3 MR. MERRIWEATHER: Counsel, we don't need  
4 the sarcasm.  
5 MR. NEMEROFF: I am going to reserve the  
6 right to re-depose her, if she is going to give  
7 different information at a later time, if she claims to  
8 be the person with most knowledge. She knew she was  
9 going to be deposed about these various issues, and I  
10 expect that she is going to be able to answer these  
11 questions. If not, I am going to ask the Court to bring  
12 her back at a time to answer these issues.  
13 MR. MERRIWEATHER: The notice we were told  
14 about was not every single thing in connection that  
15 Wyndham has with the State of Illinois.  
16 MR. DELY: Excuse me. I was --  
17 MR. MERRIWEATHER: I was not given notice  
18 that you were going to depose her on what Wyndham  
19 facilities we were going to have in Cook County or on  
20 the Illinois Secretary of State website.  
21 MR. NEMEROFF: These issues deal with the  
22 issue of forum non-convenience.  
23 MR. DELY: The interrogatories will clarify  
24 for the record. The interrogatories sent by the  
25 Plaintiff were all targeted towards the franchise

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1 agreement, as were every other interrogatory had to do  
2 with the franchise.  
3 MR. NEMEROFF: The whole reason why this  
4 deposition is taking place and where Wyndham does its  
5 business is directly relevant to the case law, to the  
6 issue of whether or not this is going to stay in  
7 Illinois or whether or not this is going to Mexico.  
8 MR. DELY: I think what you're talking about  
9 is every possible thing with the Illinois Secretary of  
10 State. The questions are not --  
11 MR. NEMEROFF: She is a person -- she's  
12 saying that she is the person with the most knowledge on  
13 this issue. Yet, she is not answering my question as  
14 relates to this issue.  
15 MR. DELY: You're just not happy with the  
16 answer.  
17 MR. NEMEROFF: I don't know at this time,  
18 that is not an appropriate response when you are  
19 identified as the person with the most knowledge.  
20 Reasonable inquiry is at issue. It's absolutely  
21 reasonable.  
22 MR. DELY: And as long as the  
23 interrogatory --  
24 MR. NEMEROFF: This has nothing to do with  
25 the interrogatories. This has to do with your

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1 identification. I want to know -- I want -- then I am  
2 going -- I want to know who is going to be able to  
3 answer my question to the corporate entities, wherein  
4 they do business.  
5 MR. DELY: She told you she is.  
6 MR. NEMEROFF: She is not answering those  
7 questions. That is exactly the problem. You identified  
8 her as the person with the most knowledge.  
9 MR. DELY: Your tone of sarcasm --  
10 MR. NEMEROFF: My tone?  
11 You know, with all due respect, we are going  
12 to go into court and ask the Court to bring back this  
13 witness who is identified as the person with the most  
14 knowledge as to the various corporate entities of  
15 Wyndham and where they do business.  
16 Q. Ma'am, you are the person with the most knowledge  
17 in the whole corporation as to whether Wyndham Hotel  
18 Group International and Wyndham Hotel and Resorts LLC do  
19 their business, correct?  
20 A. Yes.  
21 Q. And, yet, despite you identifying yourself as the  
22 person with the most knowledge, you're unable to answer  
23 questions as to where, what states and whether or not --  
24 Number 1, whether or not Wyndham Hotel Group  
25 International, Inc., and Wyndham Hotel and Resort LLC do

27 (Pages 105 to 108)

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1 business in the State Illinois; is that correct?

2 A. I don't recall you asking that question in that  
3 way.

4 Q. Well, then I just asked that question. Can you  
5 give me that answer?

6 A. Repeat the question, please.

7 Q. Yes. First of all, does Wyndham Hotel and Resort  
8 LLC do business in the State of Illinois?

9 A. To my understanding of the phrase, yes.

10 Q. Does Wyndham Hotel Group International, Inc., do  
11 business in the State of Illinois?

12 (Pause.)

13 A. As we sit here, I do not recall.

14 MR. DELY: The last question was asking in  
15 regards to International, Inc.?

16 MR. NEMEROFF: That's correct.

17 MR. DELY: I believe she answered that she  
18 did not believe so.

19 MR. NEMEROFF: She just answered, she  
20 doesn't recall.

21 Q. Wyndham Hotel and Resorts, LLC, is a wholly owned  
22 subsidiary of Wyndham Hotel Group International,  
23 correct?

24 A. Correct. Nope.

25 MR. MERRIWEATHER: Well, as I sit here, I

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1 A. I do not recall that name.

2 Q. Do you know if he is an employee of a Wyndham  
3 entity?

4 A. I am not sure.

5 Q. On the top, it says, "Wyndham Worldwide,"  
6 correct?

7 A. Yes.

8 Q. What does "Wyndham Worldwide" --

9 A. Wyndham Worldwide is the ultimate parent.

10 Q. And then it says, "Wyndham Hotel and Resorts  
11 Design and Construction," correct?

12 A. Yes.

13 Q. Looks like pictures were taken of the resort back  
14 in April of '07, correct? At least, some areas of the  
15 resort?

16 A. The date at the bottom of the page says April  
17 '07.

18 Q. Actually, the bottom of every page says April,  
19 April 25th, 2007?

20 MR. MERRIWEATHER: The witness is looking at  
21 Page 4.

22 Q. Well, looks like on the bottom left of every page  
23 it says 25, slash, 4, slash, '07, correct?

24 A. Without looking at every page, I believe so.

25 Q. And in order for what was previously known as the

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1 know that is not correct.

2 THE WITNESS: I'm sorry. I'm confused.

3 MR. NEMEROFF: With all due respect, Mark,  
4 I'm not asking you questions under oath. I'm asking the  
5 witness.

6 MR. MERRIWEATHER: I know the witness is  
7 confused between the two entities, so you're getting a  
8 lot of wrong answers. But I don't think that is going  
9 to help you in your case.

10 MR. NEMEROFF: It is not your place to  
11 correct her and testify on her behalf, with all due  
12 respect.

13 Q. Ma'am, let's go to the Conversion Plan Report,  
14 which I am going to mark as Exhibit Number 4.

15 (Whereupon, Deposition Exhibit No. 4 was  
16 marked for identification.)

17 A. I have it.

18 Q. This is a report that was prepared concerning the  
19 conversion of what was previously called the Hotel Reef  
20 Club at Cozumel Island, Mexico, to a Wyndham Resort,  
21 correct?

22 A. Correct.

23 Q. And do you know who the -- it says it was  
24 prepared by Fernando Gonzalez Bernard. Do you know who  
25 Mr. Bernard is?

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1 Hotel Reef Club to be converted to the Wyndham Resorts,  
2 there were various things that had to be done to convert  
3 it, correct?

4 A. Generally, that is correct.

5 Q. Islander Properties did not have the discretion  
6 to follow or not follow these recommendations? If  
7 Wyndham requested it, it had to be done, correct?

8 A. That is not correct.

9 Q. So you're telling me that Islander Properties  
10 could have chosen to ignore every single component in  
11 this conversion report, correct? Excuse me. This  
12 conversion plan report.

13 A. Yes.

14 Q. Okay. And where in any of the agreements, other  
15 than your interpretation of what you believe in the  
16 independent contractor agreement, does it say that;  
17 specifically, that they can choose to ignore items  
18 brought up in the Conversion Plan Report?

19 A. I don't believe that sentence, per say, appears  
20 anywhere. But as the independent contractor, they could  
21 accept some, all or none of the items in the conversion  
22 report.

23 Q. I see. Let me ask you a question. Does that say  
24 that in the independent contractor section, that they  
25 can accept -- under Section 21, Page 36 does it say

28 (Pages 109 to 112)

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1 anywhere specifically in the independent contractor  
2 section that they can accept, reject any of the policies  
3 that Wyndham has in any of its manuals?

4 A. Well, as an independent contractor, they own,  
5 operate and control their facilities so they could make  
6 any decisions that they so choose.

7 Q. No. My question wasn't your interpretation of  
8 the independent contractor, ma'am. My question was in  
9 Section 21 of the agreement, is there anywhere where it  
10 specifically says that the franchisee does not have to  
11 follow the terms of any of the manual?

12 A. It says franchisor owes franchisee no duties  
13 except as expressly provided in the agreement. It also  
14 says that the franchisee acknowledges, et cetera, and it  
15 basically says that they will not be considered to be a  
16 joint venture, partners, agents of each other.  
17 Specifically acknowledge that the relationship created  
18 by this agreement is not fiduciary, special or any  
19 similar relationship.

20 Q. Right, ma'am. My question -- well, actually,  
21 you're reading the last line of Subsection-A. Franchisor  
22 owes no duties except as expressly provided in the  
23 agreement, correct?

24 A. That's part of that section, yes.

25 Q. Right. So what is in the agreement controls the

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1 relationship between the franchisee and the franchisor,  
2 correct?

3 A. In the entire agreement, correct.

4 Q. And incorporated into that agreement is the  
5 Manual; is that correct?

6 A. The -- yes. The manual is incorporated into the  
7 agreement.

8 Q. To your knowledge, has Wyndham, the franchisor,  
9 pursued one of its franchisees for failure to comply  
10 with the brand? As one of the components, anyway, for  
11 failure to comply with the Brand Standards Manual?

12 MR. DELY: I'll object to the fact --

13 MR. NEMEROFF: I didn't ask --

14 MR. DELY: She can answer the question.

15 A. Repeat the question, please.

16 Q. Yes. My question was -- I forgot what my  
17 question was. Oh. Has Wyndham, the franchisor, ever  
18 sued one of its franchisees for failure to comply with  
19 the Brand Standards Manual?

20 A. As I sit here today, I could not answer that  
21 question.

22 Q. Why not?

23 A. I believe, as I stated earlier, I do not recall  
24 or know of every issue that legal may have addressed  
25 with regard to or whether they did address any issue

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1 regarding the brand standards.

2 Q. So the person with the most knowledge with regard  
3 to Wyndham concerning litigation would be the General  
4 Counsel, correct? I'm sorry, ma'am.

5 MR. MERRIWEATHER: She's trying to think of  
6 your answer.

7 A. The person in my company who would know what  
8 matters were subject to litigation would be the legal  
9 department. The persons in the legal department.

10 Q. Let's look at the Brand Standards Manual.

11 Exhibit-3, please. Tell me when you're ready.

12 A. I am ready.

13 Q. Go to Page 4. Are you with me?

14 A. Yes.

15 Q. Second paragraph. It says: "All standards are  
16 reviewed by Brand Management and will be modified and  
17 updated based on continuing customer research." Next  
18 sentence: "Non-compliant properties are subject to  
19 default under their license agreement or management  
20 contract. These standards will be applied throughout  
21 the Wyndham Hotels and Resorts. Your property will be  
22 subject to Quality Assurance inspections to ensure  
23 compliance with these standards."

24 I've read that paragraph correctly. Is that  
25 correct, ma'am?

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1 A. You read that -- I believe, you read it  
2 correctly.

3 Q. Let me read it again so you can make sure I read  
4 it correctly. Let's start at the beginning of Paragraph  
5 2, Page 4, Exhibit-3, of the Brand Standards Manual.

6 It says: "All standards are reviewed by Brand  
7 Management and will be modified and updated based on  
8 continuing customer research," period. "Non-compliant  
9 properties are subject to default under their license  
10 agreement or management contract," period. "These  
11 standards will be applied throughout Wyndham Hotel and  
12 Resorts," period. "Your company will be subject to  
13 quality assurance inspections to ensure compliance with  
14 these standards," period.

15 I read that correctly, didn't I, ma'am?

16 A. It is correct that the only action that we could  
17 take --

18 Q. Ma'am, all I asked is whether I read that  
19 correctly; yes or no?

20 A. I would like to answer your question.

21 Q. Answer my question. Did I read that paragraph  
22 correctly; yes or no? That's my question.

23 A. It is correct that --

24 Q. That's all I want to know. I will now ask you  
25 other questions.

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1 MR. MERRIWEATHER: I want to say, we told  
2 Chris that Valerie is not the person most knowledge  
3 about the system standards manual, so just know that  
4 when you're asking your questions.

5 MR. NEMEROFF: That's okay.

6 MR. MERRIWEATHER: We made that  
7 representation.

8 MR. NEMEROFF: I'm glad to take this in  
9 front of any Judge on this issue, so that's all right.

10 MR. DELY: She's testifying to her general  
11 knowledge and --

12 MR. NEMEROFF: All I asked her was to read  
13 something. That's all I asked.

14 MR. MERRIWEATHER: I'm just -- you've been  
15 sarcastic before. She's not most knowledgeable on this  
16 manual. That's all.

17 Q. So you're not most knowledge about whether or not  
18 this manual needs to be complied with pursuant to the  
19 terms of the contract; isn't that correct, ma'am?

20 A. No. I disagree with that statement.

21 Q. Okay. I think the words of the manual speak for  
22 itself. The Wyndham, this Exhibit-3, is the Brand  
23 Standards Manual that was in effect on October 16th,  
24 2007. Is that correct, ma'am?

25 A. I believe so.

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1 Q. Were you involved in the drafting of this  
2 document, Exhibit-3?

3 A. No.

4 Q. Were you involved in drafting of Exhibit Number  
5 1, the franchise agreement?

6 A. No.

7 Q. Does your franchise agreement specify where  
8 jurisdiction would be in case of a dispute?

9 A. On Page, Page --

10 Q. 42?

11 A. Yes.

12 Q. Well, here is my question, ma'am. Let me  
13 rephrase that. You would agree with me that this  
14 agreement between Islander Properties and Wyndham, the  
15 contract calls for it to be governed and construed under  
16 the laws of the State of New York, United States, except  
17 for its conflicts and law principles, correct?

18 A. That is how the agreement reads.

19 Q. So if there is dispute under this contract,  
20 Wyndham wants the dispute to be resolved in the United  
21 States of America; is that correct?

22 A. That would be a legal interpretation that I would  
23 defer to the legal department.

24 Q. Well, ma'am, it is in plain English there, ma'am;  
25 is that correct?

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1 A. The sentence you read, you read correctly. The  
2 interpretation, I would not want to make.

3 Q. Okay. Is there anywhere in the contract that  
4 Wyndham entered into with its franchisee in Mexico, the  
5 Cozumel property, that says that it will make itself  
6 available to the jurisdiction of Mexican Courts?

7 A. I would have to read the agreement again to be  
8 sure, but I do not believe that language is contained  
9 therein.

10 Q. To your knowledge, in any dispute with a  
11 franchisee in the country of Mexico, has Wyndham ever  
12 allowed a Mexican Court to resolve its disputes?

13 MR. DELY: I'll object to foundation.

14 Q. To your knowledge, your personal knowledge,  
15 ma'am?

16 A. My personal knowledge, I am not aware.

17 Q. Does Wyndham consider New York Courts to be less  
18 congested than, say, Mexican Courts where this agreement  
19 was with, the Mexican corporation?

20 A. I'm sorry. I could not answer that question.

21 Q. For purposes of conflicts between the franchisor  
22 and franchisee pursuant to Exhibit Number 1, does  
23 Wyndham consider New York Courts to be less congested  
24 than Mexican Courts?

25 A. I apologize. I did hear you. I don't believe I

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1 can answer that question.

2 Q. Okay. You don't know the answer, do you, ma'am?

3 A. I don't know if that question could be answered.  
4 I apologize. It is vague.

5 Q. Lawyers get paid a lot of money trying to resolve  
6 that one little issue. So you have no evidence to  
7 suggest that New York Courts are any less expedient in  
8 resolving legal disputes concerning your agreement?

9 MR. DELY: Objection. This witness doesn't  
10 have any idea regarding Mexican law. Actually, it is an  
11 incomplete hypothetical, and she can answer it, but ...

12 MR. NEMEROFF: Just for the record, every  
13 hypothetical is incomplete.

14 Q. You can answer my question.

15 A. I don't have any basis to answer that question  
16 with any certainty.

17 Q. I'm sorry. What, ma'am?

18 A. I don't have any basis to answer that question  
19 with any certainty.

20 Q. And you have no knowledge as to whether Mexican  
21 Courts are more or less congested than, say, Federal  
22 Court here in the Northern District of Illinois,  
23 correct?

24 A. Personally, no, I do not.

25 MR. NEMEROFF: I should be done in a couple

30 (Pages 117 to 120)



Page 121

1 minutes.

2 Q. Let me ask you a question. When entering into  
3 franchise agreements with -- ma'am, I am assuming that  
4 the Cozumel resort is not the only Wyndham franchise  
5 resort in Mexico, correct?

6 A. That is correct.

7 Q. Do you know how many Wyndham franchise resorts  
8 there are in the country of Mexico?

9 A. Not from recollection, no.

10 Q. More than five?

11 A. I would not want to answer that from  
12 recollection.

13 Q. Is there one in Puerto Vallarta?

14 A. I'm not comfortable of my recollection of city  
15 names to answer that question, specifically, right now.

16 Q. How about the Puerto Vallarta area, ma'am?

17 A. I would not want to recall city locations by  
18 recollection.

19 Q. So, as you sit here today, you have no -- you  
20 really don't know where Wyndham has franchised -- I  
21 mean, the person with the most knowledge about franchise  
22 agreements and you don't know where Wyndham has  
23 franchise agreements in the country of Mexico? Is that  
24 what you're saying?

25 A. I could not recall right now specific city

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1 location in the -- city in Mexico.

2 Q. Why don't you try?

3 MR. MERRIWEATHER: Come on, Dave. We have  
4 7,000 locations.

5 Q. That's my point. Why don't you start with some?  
6 I can go on the internet and find out that information  
7 in five seconds.

8 A. I would not want to recall from memory.

9 Q. You are the person with the most knowledge of  
10 that issue. Give me the name of some Wyndham Resorts in  
11 Mexico, ma'am. I realize I'm not going to hold you to  
12 Puerto Vallarta versus Nuevo Vallarta. In the general  
13 area of Acapulco, Cancun, Puerto Vallarta, Cancun. Name  
14 the hot spots in Mexico, and I'm pretty confident you  
15 will find a Wyndham franchise resort in one of them or  
16 the general vicinity of one of them. Would that be fair  
17 to say?

18 A. I think you have to understand as of today or  
19 this moment there are sites that could have de-flagged,  
20 so I would not be comfortable answering that question  
21 from memory.

22 Q. When are you going to be comfortable answering  
23 that question, ma'am, if you are not comfortable when  
24 you are at deposition under oath?

25 A. I'm not sure if I understand the question.

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1 Q. If you are not comfortable at a deposition, which  
2 you are required under oath to answer my questions, when  
3 exactly would you be comfortable answering that  
4 question?

5 A. After having the opportunity to research to the  
6 second that I'm asked the question.

7 Q. So if we come back in a week and you were asked  
8 to get that information, you could get that information  
9 for me; is that correct?

10 A. With specific points in time, yes, I could.

11 Q. Are you aware of any franchise agreement with any  
12 of Wyndham's franchise Mexican Resorts in which it  
13 allows the laws of Mexico to govern those agreements?

14 A. No, I am not.

15 Q. Does the Wyndham Cozumel resort that is the  
16 subject matter of this case have video cameras on its  
17 premises?

18 A. I do not know.

19 Q. Not for its guests. I'm talking about fixed  
20 video cameras to record things.

21 A. I do not know.

22 Q. Do you know whether or not my client, who is now  
23 deceased, and his wife, were at the Wyndham Cozumel  
24 Resort in October of 2007 on business or on personal  
25 vacation?

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1 A. No, I do not.

2 Q. Does Wyndham employ Spanish interpreters to help  
3 in its communication with either its prospective or its  
4 customers in Mexico?

5 A. Well, Wyndham does not have customers in Mexico,  
6 because we don't own or operate hotels.

7 Q. Its customers are its -- let's define that.  
8 Customers are its franchisees, ma'am. Does Wyndham hire  
9 or does Wyndham employ interpreters to communicate with  
10 its franchisee customers?

11 A. Not to my knowledge.

12 Q. How does Wyndham communicate with its franchisees  
13 then in Mexico? In English?

14 A. Written communications are sometimes in English  
15 and sometimes in Spanish.

16 Q. Specifically, with regard to the Cozumel resort  
17 that is the subject matter of our lawsuit, do you know  
18 whether or not the ownership of that resort can either  
19 speak or read English?

20 A. I do not know.

21 Q. As we sit here today, you do not know who my  
22 client booked their trip through, correct?

23 A. As I sit here today, I do not.

24 Q. Can a prospective vacationer book a vacation in  
25 Mexico directly through Wyndham?

31 (Pages 121 to 124)

Page 125

1 A. Could you rephrase the question, please?

2 Q. Yes. My question is: Can a prospective

3 vacationer sometimes who wants to go to a Wyndham

4 franchise resort in Mexico book their vacation directly

5 through Wyndham or one of Wyndham's entities?

6 A. Yes.

7 Q. And how would somebody do that?

8 A. It could take place via the web, via phone,

9 generally speaking, or directly with the franchisee's

10 website or directly with the franchisee's phone.

11 Q. You would agree that one of the purposes of a

12 franchisor/franchisee agreement for a resort is to take

13 advantage of the Wyndham brand?

14 MR. DELY: I would -- can you repeat that

15 question?

16 Q. Ma'am, you would agree that one of the reasons

17 why franchisors and franchisees enter into these

18 agreements with Wyndham is to take advantage of the

19 Wyndham brand?

20 MR. DELY: I'll object to the foundation for

21 the franchisee.

22 MR. NEMEROFF: You can answer, ma'am.

23 A. I would -- one of them -- I'm sorry. Can you

24 repeat the question. One of the reasons --

25 Q. Let me break this down into two questions. Would

Page 126

1 you agree that the Wyndham brand is very important to

2 Wyndham and its corporate entities?

3 A. Yes.

4 Q. And it is the Wyndham brand that is one of the

5 things that Wyndham markets to its prospective

6 franchisees, correct?

7 A. Yes.

8 Q. And Wyndham goes to great lengths to develop a

9 brand that the public will have confidence in, correct?

10 A. I disagree with the use of the word,

11 "confidence".

12 Q. So you don't think that one of the things that

13 the Wyndham does is to develop its brand so that the

14 public will have confidence in the hotels that

15 vacationers and others choose?

16 A. Correct. I disagree with the word, "confidence".

17 Q. Okay. Did you read your own manual?

18 A. As I stated earlier, I am not the person with the

19 most knowledge of the contents of the manual.

20 Q. Okay. You should read it. Would you agree with

21 me, Wyndham does research on its brand, correct?

22 A. Could you rephrase the question, please?

23 Q. Yes. Wyndham does research about its brand?

24 A. I'm not sure if I understand the question.

25 Q. Well, does Wyndham conduct focus groups about its

Page 127

1 brand?

2 A. I do not know whether focus groups is a vehicle

3 used.

4 Q. Do you know what market research is, ma'am?

5 A. Yes, I do.

6 Q. Does Wyndham do market research concerning its

7 brand?

8 A. Yes.

9 Q. And the purpose of market research is to allow

10 Wyndham to best position itself to -- at least, one of

11 the purposes is to best position itself so that

12 perspective travelers stay at Wyndham branded hotels and

13 Resorts, correct? One of the purposes?

14 A. I disagree. That is not correct.

15 Q. So Wyndham doesn't care whether vacationers and

16 travelers stay at its branded hotels, correct?

17 A. I disagree. That is not correct.

18 Q. You agree that Wyndham does care whether

19 vacationers and conventioners and other people that

20 travel stay at its hotels, correct?

21 A. Well, Wyndham does not have hotels. Wyndham --

22 Q. Wyndham branded hotels, ma'am.

23 A. Wyndham is -- we are concerned as to whether

24 franchisees' guests stay at the hotels. That is an

25 interest of ours.

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1 Q. And not only is it an interest of yours, Wyndham

2 pursuant to its agreement gets a percentage of the

3 revenue for those guests staying at its franchised

4 properties, correct?

5 A. That is generally correct.

6 Q. Ma'am, the whole point of having this

7 franchisor/franchisee -- I take that back. It is not

8 the whole point. One of the main points of having this

9 franchisor/franchisee agreement is so that the public

10 who is looking for a hotel or resort believes that

11 they're staying at a Wyndham property?

12 A. I disagree.

13 Q. Okay. So you think that if my client thought

14 that this -- well, strike that. You don't know what my

15 client thought, so you don't think one of the main goals

16 of Wyndham in entering into franchise agreements is to

17 develop a product, i.e., the Wyndham name, that people

18 are attracted to?

19 A. That is not the purpose of a franchise agreement.

20 Q. Who is the vice president of marketing for

21 Wyndham?

22 (Pause.)

23 A. I am not recalling a name of a VP of marketing.

24 Q. Is there a marketing department?

25 A. There are, there are individuals who have

32 (Pages 125 to 128)



Page 129

1 marketing responsibilities, yes.

2 Q. You can't name somebody that has marketing  
3 responsibility?

4 A. That, that would roll up into Jeff Smith.

5 Q. And into what? I'm sorry.

6 A. Jeff Smith.

7 Q. Let's go to Page 43 of the agreement.

8 MR. MERRIWEATHER: All right, David. We're  
9 approaching 7:00 o'clock here.

10 MR. NEMEROFF: I am wrapping up, but I'm  
11 going to finish up. I am not going to walk away. I  
12 would like to finish up.

13 Q. Could we go to Page 43, please?

14 A. I am there.

15 Q. You are there? Section 29.

16 A. Yes.

17 Q. Subsection-B, correct?

18 A. I see it.

19 Q. It says, "Franchisee agrees that, for the system  
20 to function properly, Franchisor and its affiliates  
21 should not be burdened with the cost of arbitrating or  
22 litigating system wide claims." Correct?

23 A. It does say that.

24 MR. NEMEROFF: Just give me one more minute.  
25 I'm almost done.

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1 their property?

2 A. That question would be difficult to answer the  
3 way you phrased it.

4 Q. Well, would that be typically QA?

5 A. I couldn't answer with specifics to Mr. Del Pino.

6 Q. Well, my question was, or anyone else at Islander  
7 Properties that they so designate.

8 A. I apologize. But you need to rephrase the  
9 question so that I can answer it.

10 MR. MERRIWEATHER: Can you narrow it down to  
11 what topic?

12 MR. NEMEROFF: I don't know what the various  
13 topics are that come up in this relationship.

14 A. I would say, to answer the general question, the  
15 -- in most instances the QA department or individuals  
16 charged with QA would most likely have interaction with  
17 the individual that the owner has designated as the GM  
18 or relevant or closer to GM responsibilities.

19 Q. Okay. Let me just look at my list here and I  
20 should just about be done. Sorry.

21 (Pause.)

22 Q. Ma'am, do you know why Wyndham in its franchise  
23 agreements requires jurisdiction in the United States,  
24 but when it's sued for personal injury or wrongful death  
25 wants the case litigated -- let me say it again.

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1 Q. Page 47, ma'am. Tell me when you're ready.

2 A. I'm there.

3 Q. Section 31.6, "Adherence to System Standards."

4 It says: "Notwithstanding the provisions set forth in  
5 Section 6 hereof, the parties acknowledge and agree that  
6 as Franchisor shall be operating the Hotel as an  
7 All-Inclusive Hotel, Franchisee shall seek approval from  
8 Franchisor as necessary to be granted waivers from  
9 adhering to some of the requirements set forth in  
10 Section 6A, D and E requiring strict adherence to the  
11 Systems standards, which approval shall not be  
12 unreasonably withheld. However, Franchisee shall at all  
13 times maintain substantial conformity to the System  
14 standards, despite any waivers approved by the  
15 franchisor."

16 I've read that correctly, ma'am; is that correct?

17 A. Yes.

18 Q. Do you know who Carlos Del Pino is?

19 A. In the license agreement it says, managing  
20 director title.

21 Q. Have you ever met Mr. Del Pino?

22 A. No.

23 Q. Who would have contact -- in other words, who  
24 within Wyndham would have contact with Mr. Del Pino or  
25 whoever from Islander Property's is responsible for

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1 Ma'am, do you know why when Wyndham has a legal  
2 issue with one of its franchisees its contract  
3 stipulates that it will be litigated in the United  
4 States, and, yet, when Wyndham gets sued for personal  
5 injury or wrongful death case, it wants a Mexican Court  
6 to make decisions about the case?

7 MR. DELY: I am just going to object to  
8 form. It was a completely cause of action. Form and  
9 foundation. You can answer subject to those objections.

10 A. Well, I can't answer that question, because I  
11 don't know whether the statement that you made is  
12 correct or true.

13 Q. Okay. Well, in this agreement for this property  
14 Wyndham wants any disputes with its franchisees  
15 litigated in the United States. Yet, for personal  
16 injury and wrongful death that is filed in this case at  
17 that same resort it wants its disputes resolved in a  
18 Mexican Court; not a United States Court. Do you know  
19 why that is?

20 MR. DELY: The same objections. Form and  
21 foundation.

22 A. I would have to say, again, I'm not comfortable  
23 with the way you're phrasing the question is true, so I  
24 can't answer that.

25 MR. MERRIWEATHER: Can you point --

33 (Pages 129 to 132)

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1 Q. The contract stipulates that the disputes  
2 involving the franchisor and franchisee for this Cozumel  
3 resort is in the United States, correct? We already  
4 discussed that at 42?

5 A. Yes. Generally, that's -- let me go back to 42,  
6 just to be sure.

7 MR. MERRIWEATHER: Just to move this along,  
8 where on the page does this say that, so she can see it?

9 MR. NEMEROFF: Did you have it, 42? State  
10 of New York, U.S.A.?

11 MR. MERRIWEATHER: Says nothing as to be  
12 litigated in the United States.

13 MR. NEMEROFF: Well, in terms of  
14 mediation -- let me see. In terms of mediation, it  
15 shall be conducted in the jurisdiction of Miami,  
16 Florida, U.S.A..

17 MR. MERRIWEATHER: Says litigation should be  
18 where jurisdiction could be found. It could be Mexico.  
19 Doesn't have to be U.S.. That's what the conflict is.  
20 She doesn't agree with the basis of your statement.

21 MR. NEMEROFF: I think any lawyer looking at  
22 this would determine that it has to be litigated in New  
23 York, but that is another issue.

24 Q. In fact, this agreement limits the franchisees'  
25 rights to even have a jury trial, correct?

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1 otherwise."

2 My question is based on that. First of all, did  
3 I read that correctly?

4 A. Yes.

5 Q. My question is based on that. Are employees at  
6 the Cozumel properties always are -- are employed by  
7 Islander Properties, correct?

8 MR. NEMEROFF: Objection. Foundation.

9 A. Because of the section that you read, I couldn't  
10 even answer that question. They're not employees of  
11 Wyndham.

12 Q. Well, that was going to be my next question. To  
13 your knowledge, they're not employees of Wyndham,  
14 correct?

15 A. Correct.

16 Q. And as far as employees of Wyndham goes with  
17 knowledge of this incident, is anybody in New Jersey, to  
18 your actual knowledge, had been a witness to this  
19 incident?

20 A. Not to my actual knowledge.

21 Q. And had anybody attended the inquest or gotten  
22 copy of the autopsy report?

23 A. No, not to my actual knowledge.

24 Q. And do you know if anybody had any role in doing  
25 did any type of investigation?

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1 A. Could you show me where you are, please?

2 Q. Page 29. Excuse me. Page 43, Section 29.

3 A. States the parties hereby waive their respective  
4 rights to a jury trial.

5 Q. Right.

6 MR. NEMEROFF: All right. I think I'm done.  
7 Thank you.

8 MR. DELY: I've got a couple quick things to  
9 just follow-up on quickly.

10 BY MR. DELY:

11 Q. If you could just take a look, if you would, at  
12 Section 21.

13 A. Yes.

14 Q. And if you look at --

15 MR. NEMEROFF: What page?

16 MR. MERRIWEATHER: 36.

17 Q. I would like you to go to Page 37, under Section  
18 3?

19 A. Yes.

20 Q. Okay. And it says, "Franchisor does not exercise  
21 any discretion or control over the employment policies  
22 or employment decisions of franchisee. All employees of  
23 franchisee are solely employees of franchisee, not  
24 franchisor. Franchisee is not franchisor's agent for  
25 any purpose in regard to Franchisee's employees or

Page 136

1 A. No, not to my knowledge.

2 Q. Now, materials then from an investigation would  
3 not be located in New Jersey, correct?

4 A. No. We did not conduct any investigation.

5 Q. And so you have no materials on any investigation  
6 there, because you didn't do one?

7 A. Not to my knowledge.

8 Q. Now, you have no knowledge whether Islander  
9 Properties did an investigation, do you?

10 A. No.

11 Q. But if they did, you don't have those materials,  
12 correct?

13 A. No, we do not.

14 Q. And those materials would be presumably in  
15 Mexico, correct?

16 A. I do not know where they would be.

17 Q. And, as far as any contractors who the people at  
18 Islander Properties had come in to do work on the hotel  
19 as far as cleaning and maintenance, Wyndham would have  
20 no knowledge of who those companies were, correct?

21 A. No. Not not from -- no.

22 Q. And you wouldn't have any knowledge of any  
23 companies that were brought in by Islander Properties  
24 and whether or not they performed their duties  
25 correctly, correct?

34 (Pages 133 to 136)

Page 137

1 A. We definitely would not know that.  
 2 Q. And you wouldn't know whether or not how often or  
 3 how many times Islander Properties had to change  
 4 different contractors who were involved in maintaining  
 5 the property, correct?  
 6 A. We would have no knowledge of that, whatsoever.  
 7 Q. Okay. And Wyndham would also have no knowledge  
 8 of whether or not anybody at the Islander Properties  
 9 did, in fact, make changes to who they had doing their  
 10 maintenance, correct?  
 11 A. They would not, no.  
 12 Q. And as far as the Brand Standard Manual, Counsel  
 13 read for you a small portion. If you could grab that  
 14 for me, on Page 4?  
 15 A. I'm there.  
 16 Q. And it says -- this excerpt that Counsel read to  
 17 you, "Non-compliant properties are subject to default  
 18 under their license agreement or management contract".  
 19 Now, that says, "subject to default," correct?  
 20 A. Yes, it does.  
 21 Q. It doesn't say, "will be"?  
 22 A. Correct.  
 23 Q. It doesn't say, "automatically are," correct?  
 24 A. Correct.  
 25 Q. And, as far as a relationship with its

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1 franchisees, you mentioned earlier from time to time  
 2 that waivers could be involved?  
 3 A. At any time any franchisee can request a waiver.  
 4 Q. And whether or not one occurred would be a  
 5 decision that's made between the franchisee and the  
 6 franchisor, correct?  
 7 A. Correct.  
 8 Q. The waiver wasn't unilaterally decided if a  
 9 meeting was had between the two on any type of a waiver?  
 10 A. Could you repeat that question, please?  
 11 Q. A meeting was had on whether or not any type of a  
 12 waiver would be allowed?  
 13 MR. NEMEROFF: Objection, foundation. No  
 14 idea --  
 15 Q. If you know, in a meeting, if you know the  
 16 mechanism for how a waiver would be allowed, could you  
 17 please describe it?  
 18 A. Well, the, the mechanism to request a waiver is  
 19 simply to request a waiver.  
 20 Q. And then however the parties work that request  
 21 out, can you speak to that, at all?  
 22 A. It would vary from instance to instance.  
 23 Q. This property is located in Mexico, and it deals  
 24 with the property that was constructed in 1996, correct?  
 25 Or at least it was constructed -- let me phrase that.

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1 This property was constructed before it became a  
 2 Wyndham, correct?  
 3 A. It was in existence before it was franchised with  
 4 Wyndham.  
 5 Q. And the Wyndham had no input as far as any  
 6 contractors who were involved in building this hotel,  
 7 correct?  
 8 A. Correct.  
 9 Q. And it would stand to reason that any information  
 10 regarding the construction of this particular property  
 11 would be Islander Properties. They would be the entity  
 12 who would know, correct?  
 13 MR. NEMEROFF: Objection, foundation.  
 14 A. I could not say who would know.  
 15 Q. Would it be safe, then, to assume that someone in  
 16 Mexico might know because the property is in Mexico?  
 17 A. It would be safe to assume that someone in Mexico  
 18 might know. I know we would not know.  
 19 Q. As far as the section that Counsel had you read  
 20 -- I'm sorry to be flipping around here, but I'm trying  
 21 to wrap up as quickly as possible for all of us.  
 22 On Page 42, regarding Section A, the question  
 23 about New York, the laws of the State of New York,  
 24 except for its conflict of laws principle, the clause is  
 25 -- I am going to read it, and you'll agree, states this:

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1 "This Agreement will be governed by and construed under  
 2 the laws of the State of New York, U.S.A. except for its  
 3 conflict of laws principle." Is that correct?  
 4 A. That's what it states, correct.  
 5 Q. It doesn't say all litigation involving this  
 6 contract will be in the State of New York?  
 7 A. Does not state that.  
 8 Q. As far as your affidavit, if you could, please,  
 9 take a look at that? Instead of having you read every  
 10 sentence into the record, I just would like to know if  
 11 you've had a chance to review this affidavit?  
 12 A. Yes.  
 13 Q. And are the contents of the affidavit true and  
 14 correct at the time you executed it, your knowledge,  
 15 then?  
 16 A. Yes. To the best of my knowledge.  
 17 Q. The states regarding the fact that there was no  
 18 ownership interest on behalf of Wyndham entities. That  
 19 is true and correct?  
 20 A. Correct.  
 21 Q. And as far as maintenance of the subject  
 22 property, that was not something that Wyndham had  
 23 control over, correct?  
 24 A. No control. No involvement.  
 25 Q. And as far as any employees of the Islander, we

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1 even covered the fact that you may not know who hired  
2 them, but you know Wyndham didn't, correct?

3 A. Correct.

4 MR. DELY: Thank you. Those are all the  
5 questions I have.

6 MR. NEMEROFF: I just have a few follow-up  
7 questions.

8 BY MR. NEMEROFF:

9 Q. There is no doubt that Wyndham employees have  
10 been to the Cozumel resort, correct?

11 A. Could you rephrase the question, please?

12 Q. Yes. Ma'am, Wyndham employees for business  
13 purposes have been to the Wyndham Cozumel All-Inclusive  
14 Resort, correct?

15 A. I believe so.

16 Q. And there is an ongoing communication between  
17 Wyndham and the owners of the resort; isn't that  
18 correct?

19 A. I don't know if I would agree with that  
20 statement.

21 Q. Well, ma'am, Wyndham sends new standards and  
22 changes in standards to the franchisee, correct?

23 A. Standards information is sent to the franchisee.  
24 Right.

25 Q. And, for example, if a customer calls up Wyndham

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1 could you repeat that question, please?

2 Q. If the franchisee hired an outside company to do  
3 maintenance work on the property, buff the floors or do  
4 whatever, as part of its audit rights Wyndham has a  
5 right to get copies of all bills that were paid by  
6 franchisee, correct? That would be a record?

7 A. I'm not sure I agree with that statement.

8 Q. You don't really know, do you, ma'am?

9 A. I'm not sure I agree with your statement.

10 Q. My question is, you really don't know, because  
11 that's not part of your job responsibility, is it,  
12 ma'am?

13 A. I'm not sure if I agree with your statement.

14 Q. Ma'am, my question is, is that part of your job  
15 responsibly to conduct audits of the franchisees?

16 A. You mean, my personal, day-to-day responsibility.

17 Q. My question was, is it your responsibility in  
18 your job to conduct audits of the franchisee, financial  
19 audits?

20 A. Well, there is no Wyndham whose responsibility it  
21 is to conduct audits. We have the right to, but there  
22 is no one responsible for conducting audits, because we  
23 have no say in the day-to-day operations of the  
24 franchisee.

25 Q. Ma'am, let me speak a little slower. Please,

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1 and complains about the Franchisee's property, Wyndham  
2 contacts that franchisee about that problem; is that  
3 correct?

4 A. If we receive a call, we would contact the  
5 franchisee, generally.

6 Q. Okay. And, in fact, inspections are done at the  
7 property by Wyndham, correct?

8 A. If the property is inspected, it would be done by  
9 Wyndham.

10 Q. Right. And on Page 24 of the agreement -- tell  
11 me when you get there.

12 A. I'm there.

13 Q. Under Section E, Wyndham has a right to audit the  
14 books, records, accounts, tax returns of the franchisee  
15 related to the operation of the hotel from and after the  
16 opening date; isn't that correct?

17 A. Generally, correct. With -- subject to the  
18 reasonableness that was stated in the sentence.

19 Q. Okay. So if Wyndham wanted to get records of who  
20 was doing maintenance of different areas of the hotel,  
21 they have a right to do so; isn't that correct?

22 MR. DELY: I object to form and --

23 MR. NEMEROFF: All records, books, accounts,  
24 blah, blah, blah.

25 A. Could you -- I'm sorry. I know it is late, but

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1 listen to my question.

2 Is it part of your responsibility to conduct  
3 financial audits of the franchisee, your responsibility,  
4 you personally?

5 A. No. It is not my responsibility.

6 Q. In fact, Wyndham receives a monthly report of the  
7 franchisee's expenses; isn't that correct?

8 A. That is not correct.

9 Q. Okay. I'm sorry. Every month it receives a  
10 report of the gross package revenues, the source and  
11 amounts of other revenues generated at the hotel, room  
12 occupancy and rates, reservations data and some other  
13 data and information as franchisor may require, correct?

14 A. It is the franchisee's responsibility to send  
15 those monthly. That does not necessarily mean that we  
16 receive them monthly.

17 Q. I see. Ma'am, isn't that how Wyndham keeps track  
18 of how much it is owed under the contract as a  
19 percentage of the gross package revenues?

20 A. If the franchisee submits the monthly report,  
21 yes. That would be how we determine what the monthly  
22 fee would be.

23 Q. And what if they don't submit the information of  
24 the gross package revenues? Then how does Wyndham  
25 determine what its percentage of its fee is?

36 (Pages 141 to 144)

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1 A. The answer to that question would generally  
2 depend on how, how they had previously or whether they  
3 had previously complied with the monthly report.

4 Q. So that Wyndham would look at prior reports to  
5 determine current gross package revenues? Is that what  
6 you're saying?

7 A. No.

8 Q. All right. Ma'am, those franchisees are required  
9 to send the revenues, because that is the only way that  
10 Wyndham can determine what it's entitled to under the  
11 terms of the contract financially; isn't that correct?

12 A. The licensees are required to send the monthly  
13 reports because that is the way the monthly fee is  
14 calculated.

15 Q. In fact, franchisees are also required to send a  
16 balance sheet in an unaudited quarterly profit and loss  
17 statement; isn't that correct?

18 MR. MERRIWEATHER: He's looking at C.

19 A. Generally correct.

20 Q. There is an ongoing communication between the  
21 franchisor and the franchisee; is that correct, ma'am?

22 A. Yes. Generally, yes.

23 (Discussion off the record.)

24 MR. MERRIWEATHER: Nothing you have asked  
25 was in the scope of what was on redirect.

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1 Q. Ma'am, with regard to -- ma'am, do you have  
2 complete knowledge as to what Wyndham did with regard to  
3 communication about this lawsuit with its franchisee?

4 A. Could you repeat that question, please?

5 Q. Yes, ma'am. As we sit here today, do you have  
6 knowledge as to what Wyndham did with regard to  
7 communication about the facts or events that are the  
8 subject matter of the lawsuit that we're here for today?

9 A. I do not understand the question.

10 Q. My question is: You don't know whatever person  
11 involved with Wyndham has done in terms of investigating  
12 the facts of the lawsuit involving my client and Wyndham  
13 at the Cozumel resort, do you?

14 A. To my knowledge, no one from Wyndham has  
15 investigated this incident.

16 Q. You don't know whether the general -- have you  
17 spoken to the General Counsel about whether Wyndham has  
18 investigated this accident?

19 MR. DELY: I object because asked and  
20 answered. She said, to her knowledge, no one has done  
21 it.

22 MR. NEMEROFF: Good.

23 Q. My question is: Have you spoken to the General  
24 Counsel or anyone, any of the lawyers in the General  
25 Counsel's office at Wyndham about whether an

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1 investigation has been done?

2 MR. DELY: And she's asked and answered it.

3 A lawyer is part of everybody.

4 MR. MERRIWEATHER: I would just caution her  
5 not to reveal any subject of --

6 MR. NEMEROFF: I'm asking. I'm not asking  
7 what they have told her.

8 A. I'm not comfortable answering that question.

9 Q. Well, I am going to ask you to answer it or I'm  
10 going to certify the question and ask Judge Levkow to  
11 force you to answer it.

12 MR. DELY: It's been asked and answered.  
13 General Counsel is part of everybody.

14 MR. NEMEROFF: Don't make a speaking  
15 objection.

16 Q. I would ask you to answer the question, ma'am.

17 A. I'm not comfortable with answering the question  
18 regarding conversations with Counsel at Wyndham.

19 Q. I didn't ask you what the contents of those  
20 conversations were. I asked you whether or not you've  
21 had any conversations concerning whether Wyndham has  
22 conducted investigation?

23 A. I apologize. But I don't see the difference.

24 MR. MERRIWEATHER: Well, you can answer,  
25 Valerie, if you've had the conversation. Just don't

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1 reveal, if you did have the conversation, about what you  
2 actually discussed.

3 A. I have not had that conversation with General  
4 Counsel at Wyndham.

5 Q. And when you say, "General Counsel," not only  
6 General Counsel but all of the lawyers at Wyndham,  
7 correct?

8 A. No. I meant the General Counsel.

9 Q. I know exactly what you meant, ma'am.

10 MR. DELY: That was the question you asked.

11 MR. NEMEROFF: No, I did not. I actually  
12 said General Counsel or any of the lawyers that are at  
13 Wyndham.

14 MR. DELY: Well, clarify.

15 Q. Have you had any conversations with any of the  
16 lawyers for Wyndham, Wyndham's legal department, from  
17 the General Counsel on down, concerning whether Wyndham  
18 had conducted any investigation of the event that  
19 include my lawsuit on behalf of my clients against  
20 Wyndham?

21 MR. DELY: You can answer. Just don't  
22 reveal any substance of any conversations with Wyndham  
23 attorneys.

24 A. The topic did come up.

25 Q. Who did you speak to in the legal department?

37 (Pages 145 to 148)



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1 A. I do not recall right now.

2 MR. MERRIWEATHER: I am going to have to  
3 say, I am going to end this in a minute. It is 7:30 in  
4 a minute here.

5 MR. NEMEROFF: We'll come back.

6 MR. MERRIWEATHER: This is ridiculous.

7 MR. NEMEROFF: The Federal rules allow me  
8 the ask my questions. There is no time limits. We've  
9 only been at this for a relatively short period of time.

10 MR. MERRIWEATHER: Then we'll come back. It  
11 is 7:30 here. We'll bring her back another day. I'm  
12 not saying I'm ending it right now.

13 MR. DELY: All due respect, everybody has  
14 been very accommodating. We've put in a long day.  
15 We're getting close to the end here. Let's push  
16 through. But this line of questioning is -- we've been  
17 over it before. You've asked it before.

18 MR. NEMEROFF: You know what. The nice part  
19 about being a lawyer representing a client, I'll make  
20 the decisions as to what I think is relevant. And I  
21 will do that. You can tell her if you don't think that  
22 she should answer. Then you tell her not to answer. I  
23 will abide by what you say. I'll certify the question  
24 and then we will go to Judge Levkow and make a  
25 determination whether you are right or wrong.

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1 answer?

2 A. I can't even remember the question now.

3 Q. Could you repeat the question? I'll be glad to  
4 let you take a break.

5 A. I did answer, sir. I just don't ...

6 MR. DELY: Can you ask the court reporter to  
7 reread the answer then?

8 THE WITNESS: May I take a break now,  
9 please?

10 MR. MERRIWEATHER: The witness is very  
11 tired. I don't think any judge is going to expect  
12 someone to stay until ridiculous hours when they're  
13 tired.

14 MR. NEMEROFF: I'm not insisting that we  
15 proceed beyond right now. Counsel for Wyndham here  
16 would like us to proceed.

17 MR. DELY: Then we are done, if that is  
18 going to be it. Then we're done for the day, and we'll  
19 reconvene at a later time.

20 MR. NEMEROFF: That's fine with me.

21 MR. DELY: You asked the questions beyond  
22 the scope.

23 MR. NEMEROFF: I'm not limited to the scope  
24 of -- this is not trial. I'm not limited in scope of  
25 the redirect in a discovery deposition.

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1 MR. DELY: Let's get to the end of this. We  
2 have had enough of this.

3 MR. NEMEROFF: That's what my point is. I  
4 am going to ask questions I think are relevant. If you  
5 think it is not relevant or she shouldn't answer it, by  
6 all means, tell her not to. I'll certify it and I'll  
7 ask the Judge.

8 MR. DELY: I know you enjoy making these  
9 statements. Let's continue with the next question and  
10 get this over with.

11 Q. One of your job responsibilities is not to  
12 investigate accident claims against Wyndham, correct?

13 A. Can you rephrase that question, please?

14 Q. I'll speak slower, ma'am. One of your job  
15 responsibilities, your job responsibilities does not  
16 include investigating accident claims for personal  
17 injury or wrongful death filed against Wyndham; isn't  
18 that correct?

19 A. Correct. But before a question, I need to have a  
20 break, please.

21 Q. Well, no, no. Not in the middle of a question,  
22 with all due respect.

23 MR. MERRIWEATHER: She just finished  
24 answering the question.

25 Q. I didn't hear the answer. I didn't hear the

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1 MR. DELY: You are assuming.

2 MR. NEMEROFF: That's fine. You know what?

3 You guys want to terminate it. That's fine. But we  
4 will ask and come back at another time. It is -- just  
5 for the record it is 6:28 here, Chicago time. This  
6 deposition was scheduled to start at --

7 MR. DELY: 2:00 p.m., Central time.

8 MR. NEMEROFF: I think we started a little  
9 bit past there. But not all that far past there. We've  
10 been at it for the better part of a four hours.

11 MR. DELY: How close are we?

12 MR. NEMEROFF: I don't know. You guys want  
13 to terminate it?

14 THE WITNESS: I need to step out to go to  
15 the rest room.

16 MR. NEMEROFF: That's fine. You guys want  
17 to terminate it, that's fine. We're done. We will come  
18 back another time and finish it.

19 MR. DELY: Okay.

20 MR. NEMEROFF: One thing I need to know is,  
21 I don't know have the court reporter's name.

22 Are you ordering?

23 MR. DELY: Well, you know what? Can I get  
24 your contact information? I am probably going to order  
25 an E-Tran only, with a mini.

38 (Pages 149 to 152)

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1 MR. NEMEROFF: As soon as he orders, then  
 2 I'll take a copy. I just want a mini only.  
 3 MR. DELY: Actually, you know what, give me  
 4 the E.  
 5 MR. NEMEROFF: I will take a copy of a mini  
 6 and an E-Tran, too. My e-mail, plaintiff lawyer, is  
 7 j-u-r-y-m-a-n, with the Number 1, at AOL dot com.  
 8 MR. DELY: Mine is Christopher dot d-e-l-y  
 9 at Wilson Elser dot com.  
 10 (Whereupon, the Deposition was adjourned at  
 11 approximately 7:37 p.m.)  
 12  
 13  
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# CERTIFICATE

1  
 2  
 3  
 4  
 5 I, JAMES A. KORWAN, a Certified Shorthand  
 6 Reporter and Notary Public of the State of New Jersey,  
 7 do hereby certify that prior to the commencement of the  
 8 examination, the witness was duly sworn by me to testify  
 9 the truth, the whole truth, and nothing but the truth.  
 10 I FURTHER CERTIFY that the foregoing is a true  
 11 and accurate transcript of the testimony as taken  
 12 stenographically by and before me at the time, place and  
 13 on the date hereinbefore set forth, to the best of my  
 14 ability.  
 15 I FURTHER CERTIFY that I am neither a relative  
 16 nor employee nor attorney nor counsel of any of the  
 17 parties to this action, and that I am neither a relative  
 18 nor employee of such attorney or counsel, and that I am  
 19 not financially interested in this action.  
 20 Dated: July 9, 2008  
 21  
 22  
 23  
 24  
 25

JAMES A. KORWAN, CSR NO. 1800

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VALERIE CAPERS WORKMAN, JULY 2, 2008

## C E R T I F I C A T E

I, JAMES A. KORWAN, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness was duly sworn by me to testify the truth, the whole truth, and nothing but the truth.

I FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

Dated: July 9, 2008



JAMES A. KORWAN, CSR NO. 1800





5316 N. MILWAUKEE AVE., STE. 1 • CHICAGO, ILLINOIS 60630 • (800) 342-5315 (except Illinois)  
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